

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 <i>communicated</i> by a <i>firm</i> without contravening section 238(1) of the <i>Act</i> (Restrictions on promotion of collective investment schemes).
3.2.2-A	G	<i>PRIN</i> applies to the communication of promotions concerning <i>payment services</i> and <i>electronic money</i> .
3.2.2A	R	[deleted]
3.2.3	R	Subject to ■ PRIN 3.2.4R , <i>Principles</i> 3, 4 and (in so far as it relates to disclosing to the <i>FCA</i>) 11 (and this chapter) also: <ul style="list-style-type: none"> (1) apply to <i>firms</i> with respect to the carrying on of <i>unregulated activities</i> (for <i>Principle</i> 3 this is only in a <i>prudential context</i>); and (2) for <i>firms</i> and other <i>persons</i> that are subject to the <i>Principles</i>, take into account any activity of other members of a <i>group</i> of which the <i>firm</i> is a member.
3.2.4	R	In relation to an <i>Annex II benchmark administrator</i> which: <ul style="list-style-type: none"> (1) administers only <i>benchmarks</i> which are subject to Annex II to the <i>benchmarks regulation</i>; and (2) does not have <i>permission</i> to carry on any other <i>regulated activities</i> in relation to which <i>Principle</i> 11 applies, <p><i>Principle</i> 11 (in so far as it relates to disclosing to the <i>FCA</i>) applies only to the <i>regulated activity</i> of <i>administering a benchmark</i>.</p>
3.2.5	G	The <i>FCA</i> only expects an <i>Annex II benchmark administrator</i> subject to ■ PRIN 3.2.4R to disclose information under <i>Principle</i> 11 which is relevant to the <i>firm's</i> compliance with its obligations under the <i>benchmarks regulation</i> .
3.2.6	R	Principle 12 and PRIN 2A: additional application provisions <ul style="list-style-type: none"> (1) <i>Principle</i> 12 and ■ PRIN 2A apply to a <i>firm's retail market business</i>, including in respect of <i>existing products</i> and <i>closed products</i>. (2) (a) Subject to (b), <i>Principle</i> 12 and ■ PRIN 2A apply to a <i>firm</i> with respect to the <i>communication</i> or <i>approval</i> of a <i>financial promotion</i> (see ■ PRIN 3.2.2R), but only if the <i>financial promotion</i> is addressed to, or disseminated in such a way that it is likely to be received by, a <i>retail customer</i>. (b) <i>Principle</i> 12 and ■ PRIN 2A do not apply to the <i>communication</i> or <i>approval</i> of a <i>financial promotion</i> to the extent that the <i>financial promotion</i> relates to an activity that is excluded from the definition of <i>retail market business</i> 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*, *ICOB*S, *MCOB*, *BCOB*S, *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
Principles 1, 2 and 3	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> .
Principle 4	applies with respect to activities wherever they are carried on.
Principle 5	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).
Principles 6, 7, 8, 9 and 10	<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>on-shored regulation</i> .
Principle 11	applies with respect to activities wherever they are carried on.
Principle 12 and PRIN 2A	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>on-shored 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.