

Chapter 3

Rules about application

3.1 Who?

- 3.1.1** **R** *PRIN* applies to every *firm*, except that:
- (1) for an *incoming EEA firm* or an *incoming Treaty firm*, the *Principles* apply only in so far as responsibility for the matter in question is not reserved by an *EU instrument* to the *firm's Home State regulator*;
 - (2) for an *incoming EEA firm* which is a *CRD credit institution* without a *top-up permission*, *Principle 4* does not apply;
 - (3) for an *incoming EEA firm* which has *permission* only for *cross border services* and which does not carry on *regulated activities* in the *United Kingdom*, the *Principles* do not apply;
 - (4) for a *UCITS qualifier* and *AIFM qualifier*, only *Principles 1, 2, 3, 7 and 9* apply, and only with respect to the activities in **PRIN 3.2.2 R** (*Communication and approval of financial promotions*);
 - (5) *PRIN* does not apply to an *incoming ECA provider* acting as such; and
 - (6) *PRIN* does not apply to a *firm* in relation to its carrying on of *auction regulation bidding*.
- 3.1.2** **G** **COBS 1 Annex 1** contains *guidance* that is relevant to the reservation of responsibility to a *Home State regulator* referred to in **PRIN 3.1.1 R (1)**.
- 3.1.3** **G** [deleted]
- 3.1.4** **G** **PRIN 3.1.1 R (3)** puts *incoming EEA firms* on an equal footing with unauthorised overseas persons who utilise the overseas persons exclusions in article 72 of the *Regulated Activities Order*.
- 3.1.5** **G** **PRIN 3.1.1 R (4)** reflects section 266 of the *Act* (*Disapplication of rules*).
- 3.1.6** **R** A *firm* will not be subject to a *Principle* to the extent that it would be contrary to the *UK's obligations* under an *EU instrument*.
- 3.1.7** **G** **PRIN 4** provides specific guidance on the application of the *Principles* for *MiFID business*.

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The *Principles* will not apply to the extent that they purport to impose an obligation which is inconsistent with the *Payment Services Directive*, the *Consumer Credit Directive* or the *Electronic Money Directive*. For example, there may be circumstances in which *Principle 6* may be limited by the harmonised conduct of business obligations applied by the *Payment Services Directive* and the *Electronic Money Directive to credit institutions* (see Parts 6 and 7 of the *Payment Services Regulations* and Part 5 of the *Electronic Money Regulations*) or applied by the *Consumer Credit Directive* (see, for example, the information requirements in the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013)).

3.2 What?

- 3.2.1A** **R** *PRIN* 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*, *credit-related regulated activity*, *insurance distribution activity* and *accepting deposits*; and
 - (4) activities directly arising from *insurance risk transformation*.
- 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).
- 3.2.2A** **R** ■ *PRIN 1 Annex 1*, ■ *PRIN 3.4.1 R* and ■ *PRIN 3.4.2 R* do not apply with respect to the carrying on of *credit-related regulated activities*.
- 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 with respect to the carrying on of *unregulated activities* (for *Principle 3* this is only in a *prudential context*); and
 - (2) 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*.

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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*.

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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> unless another applicable <i>rule</i> or <i>EU 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>EU 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> .
<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 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> unless another applicable <i>rule</i> or <i>EU 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>EU regulation</i> .
<i>Principle 11</i>	applies with respect to activities wherever they are carried on.

3.3.2 G [deleted]

3.4 General

Clients and the Principles

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**

- (1) **■ COBS 3** (Client categorisation) applies to a *firm* intending to conduct, or conducting, *designated investment business* (other than giving *basic advice*), *ancillary activities* relating to *designated investment business* and to a *firm* intending to carry on, or carrying on, *insurance risk transformation* and activities directly arising from *insurance risk transformation*. Any *client* categorisation established in relation to such business will be applicable for the purposes of *Principles 6, 7, 8* and *9*.
- (2) The *person* to whom a *firm* gives *basic advice* will be a *retail client* for all purposes including the purposes of *Principles 6, 7, 8* and *9*.
- (3) **■ PRIN 3.4.1 R** and **■ PRIN 3.4.2 R** do not apply with respect to the carrying on of *credit-related regulated activities*. Client categorisation does not apply in relation to carrying on a *credit-related regulated activity*. The definitions of *client* and *customer* in relation to those *regulated activities* reflect the modified meaning of "consumer" in articles 36J, 39M and 89E of the *Regulated Activities Order*, as well as the definitions of "individual" and of "relevant recipient of credit" in that Order.

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*.

(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

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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

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