Electronic Money Association
Crescent House
5 The Crescent
Surbiton, Surrey
KT6 4BN
United Kingdom
Telephone: +44 (0) 20 8399 2066
www.e-ma.org

David Lamb, Capital and Compensation Standards Team
Prudential Regulation Authority
20 Moorgate
London
CP9_22@bankofengland.co.uk

16 December 2022

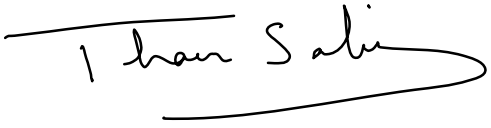
Dear Mr Lamb,

Re: EMA response to CP9/22 – Depositor Protection

The EMA is the European trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, mobile payment instruments and cryptoasset services. A list of current EMA members is available on our website: https://e-ma.org/our-members.

I would be grateful for your consideration of our comments and proposals.

Yours sincerely,



Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA responses

1. Our views on the proposals overall

We principally welcome the inclusion of safeguarded funds under the FSCS. We think the proposals to transfer covered deposits to a safeguarding account with a different CI unless an EMI is also failing are appropriate, as they address the risk that EMIs' ongoing businesses are disrupted by the direct compensation of e-money holders.

In the longer term, however, it would be helpful if the PRA considered covering e-money balances themselves by the FSCS, with a view to a proportionate approach being developed. This is because some products are inherently low in value, and would not generate the revenue that could support fees associated with a guarantee scheme. For the time being, direct membership in the FSCS may not be feasible for all EMIs but may be appropriate for some types of e-money products, and perhaps some larger firms that have the advantage of scale. Direct membership could strengthen the existing safeguarding regime and would allow firms to assure their customers by way of the widely-recognised FSCS brand. We therefore recommend making available a proportionately calibrated pathway to EMIs that wish to join the FSCS and that meet relevant conditions.

Ultimately, the Bank of England might wish to consider policy changes to overnight reserves account access. For large EMIs that already have settlement accounts at the Bank of England, this would help mitigate systemic risk from banking partners, help EMIs better manage liquidity and allow EMIs to exclude market risk by safeguarding at the Bank of England. More importantly, it would allow customers to fully understand the protections that apply to their funds and allow large EMIs to better compete with traditional banks, providing better customer choice.

2. The need for guidance

We think that there is a need for guidance to be provided to EMIs in a number of areas in order to support both business and consumers in the new arrangement. The areas that would benefit from guidance are:

- The criteria that will determine which merchant e-money balances are likely to fall in scope of the protection regime and which will fall out of scope. Similarly, the means of mitigating the risk of CI failure for such merchants by diversifying the institutional holdings of safeguarded funds.
- Whether protection will also be available where safeguarding is undertaken using the investment route under Reg. 21(2) of the Electronic Money Regulations 2011 (21(2)(b) investments in secure, liquid low-risk assets).
- Similarly, the treatment of proceeds from an insurance or guarantee under Reg. 22 of the Electronic Money Regulations 2011 which is then deposited into an account with a CI that subsequently becomes insolvent.
- Clarification that safeguarded funds relating to customers who are based outside the UK would benefit from the same protection as that of customers resident in the UK.

- The manner of dealing with safeguarded funds relating to e-money balances held by UK customers with a non-UK EMI that uses a UK CI for safeguarding.
- Good practice for how EMIs could inform their customers of the limits of protection that are offered by the FSCS, and how this could be aligned with the required communications about safeguarding.

3. The treatment of anonymously held e-money

Para. 5.5 of the consultation document states (emphasis added):

> *5.5 The proposed rules allow a look-through to eligible end customers of financial institutions that, pursuant to the EMRs/PSRs, deposit safeguarded funds into PRA-authorised credit institutions. Existing eligibility requirements in PRA rules will apply at the level of the end customer so not all customers of EMIs/PIs will be entitled to receive FSCS compensation.* ***Customers would also not be eligible if they are unidentifiable (e.g. the e-money is anonymous) or the customer cannot be verified under AML rules.***

We think there is good reason to require the identification and verification of customers before funds are paid to them. However, where funds are transferred to another safeguarding account with a different CI, ID&V should not be a consideration in deciding eligibility, as customers will not be compensated directly.

Furthermore, safeguarded funds may be destined to merchants or other customers in result of executed transactions. Treating all customers holding anonymous e-money as ineligible would constitute considerable risk for the EMI at the point of a CI's failure, as the EMI would be required both under FSCS rules and under its ongoing safeguarding obligations to make up the safeguarded pool to its full extent using its own funds. This risk in turn translates into a risk for e-money holders as a whole, as redemption obligations do not differentiate between different categories of e-money holders.

We therefore think that the eligibility condition relating to identification should be restricted to cases where e-money holders are compensated directly.