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Consumer Duty Policy Team
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

18 September 2026

Dear Sir / Madam,

Re: EMA response to CP26/23

The EMA is the EU 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, and mobile payment instruments. Most members operate across the UK and the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

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

Yours faithfully,

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA responses

Executive summary

The EMA supports the direction of travel, particularly the UK-residence restriction and the FCA's attempt to reduce over-application of the Consumer Duty in wholesale and complex chains.

However, the combined scope of the terms "retail market business", "product" and "distribution chain" may still bring remote B2B payment service providers ("**PSPs**") into scope before they can rely on material-influence or proportionality provisions. Perimeter certainty should be built into the rules, not depend mainly on fact-intensive exclusions argued after the event.

The EMA's response

Chapter 2 — Firms with customers outside the UK

<u>**Question 1**</u>

How could we avoid additional costs for firms where sectoral rules have a different territorial scope to the Duty in the future?

EMA position: The territorial scope of the Consumer Duty should be controlled by one clear, stable residence rule, with sector-specific departures only where demonstrably necessary.

The FCA should undertake a perimeter and cost assessment before introducing or changing sectoral rules that apply outside the UK. Any difference should be explained expressly, including which rule prevails and how firms may reuse existing customer-location data.

Firms should be able to rely on information already obtained for onboarding, KYC, tax or contractual purposes unless they know, or have reason reasonably to believe, that it is inaccurate. The FCA should avoid requiring parallel classifications, continuous geolocation or duplicate monitoring.

<u>**Question 2**</u>

Do you agree with limiting territorial scope by the usual residence of retail customers, and with the proposed definition?

EMA position: Yes, subject to an operational safe harbour.

A residence-based test is clearer and reduces conflict with local consumer-protection regimes. For individuals, the firm should ordinarily be able to use the residential address in its records; for non-individuals, the place of establishment.

A change of address should affect application prospectively once the firm receives and processes reliable notice. Temporary travel, use of a UK card or sort code, sterling denomination, UK safeguarding or UK infrastructure should not alter usual residence.

Recommended drafting: We recommend that the proposed PRIN 3A.5.2 R be renumbered as PRIN 3A.5.2 R(1) and the following new PRIN 3A.5.2 R(2) be included:

A firm may rely on the residential address or place of establishment held in its records unless it knows, or has reasonable grounds to believe, that the information is materially inaccurate; the firm is not required to undertake continuous location monitoring.

Question 3

Are other requirements needed to reduce unintended UK sales of products intended only for outside the UK?

EMA position: No additional prescriptive controls are needed; the proposed reasonable, risk-based approach is sufficient.

Question 4

Should the Duty continue to apply to some business where customers are usually resident outside the UK?

EMA position: The EMA has no objection to the specific, narrow exceptions identified by the FCA.

The identified exceptions, including certain UK pensions and prepaid funeral plans, do not materially affect core payment institution ("**PI**") or electronic money institution ("**EMI**") activities. Any further exception should require a demonstrably strong UK nexus and a clear consumer-protection rationale.

Question 5

Are there other consumers, products or services where the Duty should still apply outside the UK?

EMA position: No, not for the provision of payment services or issuance of electronic money ("**e-money**").

The Consumer Duty should not apply merely because the provider is UK-authorised, funds are safeguarded in the UK, the service uses UK payment infrastructure, payments are in sterling, a UK account identifier is provided, or an instrument can be used in the UK.

The Payment Services Regulations 2017 ("**PSRs**"), the Electronic Money Regulations 2011 ("**EMRs**") and applicable local law will continue to regulate the relevant activity. Treating the operational links described above as sufficient would substantially undermine the residence test.

Question 6

Comments on proposed changes to the "Application outside the UK" section of Chapter 2 of the non-Handbook guidance?

EMA position: The EMA supports the changes but recommends additional payments examples.

The guidance should cover:

- a UK EMI offering the same wallet to UK and EEA customers;
- a PI serving UK and non-UK micro-enterprises;
- an overseas distributor;
- embedded finance where the provider does not collect the end customer's address; and
- a customer changing residence during an ongoing contract.

The guidance should also confirm that manufacturers may reasonably rely on appropriate information and representations from distributors about the geographic market, subject to acting on credible contrary information.

Chapter 3 — Scope of activities

Question 7

Comments on the proposed application provisions and whether they clarify scope?

EMA position: The EMA supports consolidation into PRIN 3A but payments examples are necessary.

The present interaction between retail market business, product, distribution chain and material influence is difficult to apply. Consolidation improves accessibility, but generic examples do not resolve payment-sector chains involving schemes, processors, programme managers, agents, distributors and regulated issuers.

A couple of examples of payments sector chains would assist firms in understanding how PRIN 3A is intended to be applied in practice.

Question 8

Comments on defining "retail market business"?

EMA position: The EMA supports the objective but the proposed PRIN 3A.1.2 R remains too broad for payment chains.

The rule includes manufacturing, distribution, pricing, communications, servicing, transaction processing and account maintenance "**in relation to**" a retail product. That may capture a B2B provider with no customer contract, pricing role, target-market role, communications control or discretion over outcomes.

The perimeter should distinguish activities forming part of the retail proposition separately from merely technical or infrastructural services. Firms should not have to enter the perimeter and then prove their way out under the proposed PRIN 3A.4.7 R on material influence.

Recommended drafting: We strongly recommend a new PRIN 3A.1.2 R(3) should be included:

A service supplied by one firm to another does not constitute retail market business merely because it is used in connection with the recipient firm's retail product, where the supplier does not materially determine or influence the design, target market, retail price, customer communications, distribution strategy or customer support relating to that product.

Question 9

Comments on proposed changes to the "product" definition?

EMA position: The EMA supports simplification but recommends clarifying the phrase "activities connected with" payment services or e-money issuance as referred to in the proposed PRIN 3A.1.4 R(2)(b).

This phrase could encompass processing, gateways, ledger services, fraud screening, authentication, reconciliation, routing, connectivity and settlement support. The relevant retail product should principally be the financial service purchased, entered into or used by the retail customer, which would be consistent with the FCA's guidance in the proposed PRIN 3A.1.5 G(1).

Recommended drafting: We recommend that a new PRIN 3A.1.5 G(3) be included:

An activity does not form part of a retail product if it only provides technical, operational or infrastructural support to a firm providing that product.

Question 10

Do the changes clarify scope and obligations in a distribution chain?

EMA position: Broadly speaking, yes. However, the distribution-chain definition may still capture independent B2B suppliers.

The proposed PRIN 3A.3.2 R(2)(a) states that "*a service provided by firm A to firm B (further to an arrangement between them) to enable firm B to carry on its own activities in relation to the product*" is an example of "*arrangements between firms in the distribution chain*". Read literally, this could capture almost every processor, gateway or infrastructure provider.

Instead, the FCA should distinguish participation in distribution from supplying infrastructure used by a participant, i.e. exclude the supply of infrastructure used by a participant. This approach reflects the conceptual basis already used by the FCA for safeguarding accounts (PRIN 3A.2.1 R(12)(b)) and indirect payment-system access (PRIN 3A.2.1 R(12)(c)), therefore, it should apply generally.

Recommended drafting: We recommend that a new PRIN 3A.3.2 R(3) be included:

The supply of payment processing, payment gateway services and other infrastructure services by a service provider to a payment services provider is not an arrangement between firms in the distribution chain.

<u>Question 11</u>

Approach where a firm has no role in one or more Duty outcomes?

EMA position: Yes, the EMA supports this approach.

The EMA recommends that a payments example should be included, confirming that a PSP performing transaction execution, with no role in customer communications, is not required independently to test those communications merely because it participates in the chain.

<u>Question 12</u>

Do you agree with the proposed material-influence rules?

EMA position: Yes, the EMA agrees in principle but only if it is subject to an objective test and supported with clearer payments guidance.

The proposed PRIN 3A.4.7 R refers to a firm being "able to demonstrate" that its role is sufficiently limited or remote. It is unclear what constitutes adequate demonstration, and this is likely to put a heavy burden on firms to collect such evidence, which is not in keeping with the FCA's intention to introduce proportionality into the Consumer Duty.

We note that operational criticality is not synonymous with material influence. For example, a payment processor can be indispensable to execution while having no discretion over target market, customer proposition, retail price, communications, support or distribution.

Recommended drafting: The EMA recommends that the proposed PRIN 3A.4.7 R be revised as follows:

In relation to a firm in a distribution chain, the Consumer Duty does not apply where the firm's role in relation to a product is so limited or remote that the firm cannot determine or materially influence outcomes for retail customers in connection with that product.

<u>Question 13</u>

Comments on classifying manufacturers?

EMA position: The EMA supports the principal and secondary manufacturer categories but "substantive control" requires a payments-specific qualification.

We note that a PI or an EMI may retain approval or veto rights for financial crime, safeguarding, security, transaction limits, resilience, disclosures, complaints, agent oversight or legally permissible functionality because it is the regulated entity. However, such rights do not necessarily indicate commercial control of the overall proposition.

Classification should identify who genuinely controls the design and commercial operation of the relevant feature, particularly in embedded-finance, programme-manager and white-label models.

Recommended drafting: The EMA recommends that a new PRIN 2A.2A.7 R(5) be included:

Control exercised solely or principally to discharge a statutory or regulatory obligation does not, by itself, amount to substantive control for determining whether a firm is a principal manufacturer.

Question 14

Should similar changes be made to DISC and PROD?

EMA position: No comment. Those rules principally concern investment products and are not material to the core payment and electronic-money activities represented by the EMA.

Question 15

How should the new manufacturer approach apply to existing products and services?

EMA position: The EMA recommends that the new approach be applied to new arrangements and when an existing arrangement is materially altered.

Firms should not be required to repaper large populations of legacy programme-manager, agent, distributor or platform contracts solely to adopt new terminology. Existing governance records should be sufficient until material amendment, renewal or replacement.

The FCA should provide express transitional relief and a reasonable implementation period of at least 18 months.

Question 16

Comments on outsourcing arrangements relating to manufacture?

EMA position: The EMA supports this approach provided outsourcing is distinguished from buying an independent B2B service.

The relevant inquiry is whether the provider performs, as between the parties, an activity that forms part of the regulated firm's own retail-market role. Operational reliance alone should not turn a payment processor, SaaS provider, scheme-connectivity supplier or fraud-analysis provider into an outsourced manufacturer. The substance of the arrangement should control, not its contractual label.

<u>**Question 17**</u>

Do you agree with the proposed exclusions, and should they change?

EMA position: The EMA supports the safeguarding account exclusion and indirect-access exclusion. However, the EMA recommends amending the merchant-acquiring exclusion.

The Safeguarding-account exclusion (PRIN 3A.2.1 R(12)(b)) and indirect-access exclusion (PRIN 3A.2.1 R(12)(c)) are correctly treated as infrastructure behind the retail service. However, the proposed PRIN 3A.2.1R(11) excludes merchant acquiring only when neither the payer nor the payee is a retail customer. In an ordinary card purchase the payer is often a consumer but is not the acquirer's customer. The drafting could therefore pull ordinary acquiring into the Consumer Duty despite the FCA's explanation that the acquirer generally serves the merchant.

The merchant-acquiring exclusion should focus on the recipient of the acquiring service. A micro-enterprise merchant may be within the payment-sector retail perimeter but a consumer cardholder should not become the acquirer's retail customer merely by paying the merchant.

Recommended drafting: The EMA recommends that the proposed PRIN 3A.2.1 R(11) be amended as follows:

acquiring payment transactions where the firm's customer in respect of the acquiring service is not a retail customer.

<u>**Question 18**</u>

Are other similar exclusions needed?

EMA position: Yes. The EMA recommends adding a general, technology-neutral B2B payment-infrastructure exclusion.

The rationale for excluding safeguarding and indirect access applies to other services that are necessary to a retail payment but do not determine retail outcomes. The rule should be functional and should not list technologies exhaustively.

Potential examples include processing, gateways, routing and messaging, scheme connectivity, tokenisation, technical ledgers, reconciliation, settlement support, account infrastructure, data transmission, fraud screening and authentication.

This exclusion should, of course, be conditional on:

- the service is supplied to another business, not directly to the retail customer.
- the provider does not determine the retail target market, price, distribution strategy, communications or customer support; and

- the provider does not otherwise exercise substantive discretion over retail-customer outcomes.

Recommended drafting: The EMA recommends that a new PRIN 3A.2.1 R(17) be included:

the provision by a firm to another person of technical, operational or infrastructural services in connection with payment services or the issuance of electronic money, where the firm does not provide the relevant retail product to a retail customer and does not determine or materially influence its design, target market, retail pricing, distribution, customer communications or customer support.

<u>**Question 19**</u>

Comments on proposed changes to Chapters 2 and 6 of the non-Handbook guidance?

EMA position: The EMA supports the changes but recommends adding a dedicated payments/e-money section with worked examples.

Examples should cover:
- EMI - programme manager – distributor - consumer;
- PI - technical processor - customer;
- acquirer - large merchant - consumer;
- acquirer - micro-enterprise;
- indirect-access provider - PI;
- PI/EMI - safeguarding bank;
- agents and distributors;
- payment initiation service providers and account service information providers; and
- white-label finance where commercial design and regulated controls sit with different firms.

Each example should identify the product, the retail customer, the relevant firm's role, applicable outcomes and any separate responsibility arising under the PSRs or the EMRs.

Chapter 4 — Proportionate application

<u>**Question 20**</u>

Do you agree with clarifying roles and responsibilities across the distribution chain?

EMA position: Yes.

The proposed PRIN 3A.4.4 R makes a firm responsible for its own conduct, not for ensuring another firm's compliance. The proposed PRIN 3A.4.5 G also preserves responsibility arising under statute, contract or other law.

The guidance should distinguish Consumer Duty responsibility from the separate responsibilities a PI or an EMI may have for agents or distributors under the PSRs and EMRs. Sectoral responsibility should not become a general duty to police every independent participant in payment execution.

Question 21

Do you agree that support for vulnerable consumers differs by role in the chain?

EMA position: Yes.

The customer-facing firm is generally best placed to identify and respond to an individual's vulnerability. A remote manufacturer should focus on whether its own design or activities create particular vulnerability risks and should be able reasonably to rely on appropriate information from customer-facing firms. This approach is especially important for embedded and intermediated payment products.

Question 22

Do you agree with a reasonable approach to information gathering and sharing?

EMA position: Yes.

The standard should be the minimum information reasonably necessary for the firm's own Consumer Duty responsibilities. Firms should not be presumed to need end-customer-level personal data merely because they form part of a payment chain.

Aggregate metrics, exception reporting or thematic management information should suffice where they allow the firm to monitor its own influence and act on material concerns. Firms should not need to recreate existing regulatory or operational reporting, and an inability reasonably to obtain information should not itself imply non-compliance. Expectations must remain consistent with data-protection and confidentiality duties.

Question 23

Do you agree that board or governing-body reporting should be proportionate?

EMA position: Yes.

Firms should not need a standalone Consumer Duty board report where relevant information can be incorporated into existing governance. This is particularly important for smaller PIs and EMIs.
Reporting should focus on material risks, outcomes, trends, remediation and matters requiring challenge or decision. It should not reproduce granular operational management information or repeatedly redocument the perimeter without a material change.

Chapter 5 — Interaction with other product-governance rules

<u>**Question 24**</u>

Where would clarification help avoid unnecessary duplication?

EMA position: No comment on PROD 3 and retail investment products.

If the question is intended to have wider application, the EMA refers to its answers to Questions 19, 20 and 22 on payment-sector examples, allocation of responsibility and targeted information exchange.

Examples should cover:

- EMI - programme manager – distributor - consumer;
- PI - technical processor - customer;
- acquirer - large merchant - consumer;
- acquirer - micro-enterprise;
- indirect-access provider - PI;
- PI/EMI - safeguarding bank;
- agents and distributors;
- payment initiation service providers and account service information providers; and
- white-label finance where commercial design and regulated controls sit with different firms.

Each example should identify the product, the retail customer, the relevant firm's role, applicable outcomes and any separate responsibility arising under the PSRs or the EMRs.

<u>**Question 25**</u>

Should PROD 3 be disapplied for particular areas or activities in reliance on the Duty?

EMA position: No comment.

PROD 3 does not generally govern the core payment and e-money activities represented by the EMA.

<u>**Question 26**</u>

Does the proposed non-Handbook guidance sufficiently reduce duplication or uncertainty?

EMA position: No comment on the investment-product-specific guidance; further payments guidance is needed.

The EMA reiterates its request for the examples identified in response to Question 19 and for a clear boundary between retail payment services, distribution, outsourcing and independent B2B infrastructure.

Examples should cover:

- EMI - programme manager – distributor - consumer;
- PI - technical processor - customer;
- acquirer - large merchant - consumer;
- acquirer - micro-enterprise;
- indirect-access provider - PI;
- PI/EMI - safeguarding bank;
- agents and distributors;
- payment initiation service providers and account service information providers; and
- white-label finance where commercial design and regulated controls sit with different firms.

Each example should identify the product, the retail customer, the relevant firm's role, applicable outcomes and any separate responsibility arising under the PSRs or the EMRs.

Chapter 6 — Technical clarifications

Question 27

Do you agree with the proposed technical clarifications?

EMA position: Yes, insofar as they affect PIs and EMIs.

The EMA supports amendments that improve clarity without expanding the Consumer Duty. The final Policy Statement should identify any amendment that changes substantive obligations so firms can distinguish policy changes from corrections.

Question 28

Do you agree that the £50,000 minimum-investment exclusion applies per investment and per end investor?

EMA position: No comment.

This concerns investment instruments and does not materially affect payment or e-money services.

Question 29

Are other minor or technical changes needed?

EMA position: The EMA has made recommendations of changes in its response to the questions above.

Members of the EMA, as of September 2026

3S Money
Airbnb Inc
Aircash
Airwallex (UK) Limited
Amazon
American Express
Aplauz NL B.V.
Banked
BCB Digital Ltd
Bitstamp
Blackhawk Network EMEA Limited
Boku Inc
Booking Holdings Financial Services International Limited
BVNK
Bytedance Payments
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MuchBetter
myPOS Payments Ltd
Navro Group Limited
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Nium Solutions Limited
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Owl Payments Europe Limited
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Park Card Services Limited
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Payhawk Financial Services Limited
Paymentsense Limited
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Paysafe Group
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Peratera UK Ltd
Plaid B.V.
Pleo Financial Services A/S
PPS
Push Labs Limited
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Revolut
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