

**FEEDBACK ON CONSULTATION  
PAPER NO. 12 2009**

**THE REGULATION OF  
ELECTRONIC MONEY**

**Options for the future regulation of issuers of electronic  
money**



# CONSULTATION FEEDBACK

This paper reports on the responses received by the Jersey Financial Services Commission (the “**Commission**”) on Consultation Paper No. 12 2009: The Regulation of Electronic Money.

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# Glossary of terms

AML/CFT	means anti-money laundering/countering the financing of terrorism
EMIs	means electronic money institutions
e-money	means electronic money
EU	means the European Union
IP	means intellectual property
MSB	means money service business (as defined in the Financial Services (Jersey) Law 1998)
SEPA	means the Single Euro Payments Area
the Commission	means the Jersey Financial Services Commission
the Consultation Paper	means the Commission's Consultation Paper No. 12 2009: The Regulation of Electronic Money
the Minister	means the Minister for Economic Development
the PSD	means the EU's Payment Services Directive (Directive 2007/64/EC)
the UK	means the United Kingdom

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# 1 OVERVIEW

## 1.1 Background

- 1.1.1 In November 2009, the Commission published Consultation Paper No. 12 2009: The Regulation of Electronic Money (the “**Consultation Paper**”).
- 1.1.2 The purpose of the Consultation Paper was to consult on options for the future regulation of issuers of electronic money (“**e-money**”).
- 1.1.3 E-money is effectively an electronic alternative to cash and includes:
  - 1.1.3.1 e-money schemes which enable users to store funds on a device (e.g. plastic card or mobile phone) that is used by the bearer to make purchases; and
  - 1.1.3.2 account based e-money schemes where value is stored in an electronic account (e.g. as available through the internet) that the user can access remotely.
- 1.1.4 Well known examples in the United Kingdom include electronic purses such as sQuidcard, and web-based services such as a PayPal account.
- 1.1.5 The Consultation Paper explained that there is currently no specific regulatory regime in Jersey covering the issuing of e-money<sup>1</sup>. The absence of a specific regulatory regime is considered by the Commission to potentially pose risks both to the reputation of the Island and to consumers. It may also act as a disincentive to the development of e-money products.
- 1.1.6 The Consultation Paper sought respondents’ views on four possible options for the future regulation of e-money issuers:
  - 1.1.6.1 **Option 1** is to implement a regulatory regime based on the European Union (“EU”) approach. Regulation would be both prudential (setting minimum financial resource requirements) and cover conduct of business (the setting of minimum standards when dealing with consumers). The prudential regime would broadly follow that in a new Directive on ‘Electronic Money Institutions’ (“EMIs”) recently adopted by the EU (Directive 2009/110/EC<sup>2</sup>). The conduct of business regime would broadly follow that in the EU’s Payment Services Directive (Directive 2007/64/EC<sup>3</sup>) (the “PSD”).
  - 1.1.6.2 **Option 2** is to implement a bespoke regulatory model which, in terms of regulatory requirements, would fall between those of Options 1 and 3.

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<sup>1</sup> Note, however, that persons who issue and administer e-money are subject to Jersey’s anti-money laundering/countering the financing of terrorism (“**AML/CFT**”) legislation.

<sup>2</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:267:0007:0017:EN:PDF>

<sup>3</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:319:0001:01:EN:HTML>

- 1.1.6.3 **Option 3** is to extend the existing regulatory regime for money service businesses (“**MSBs**”) to e-money issuers.
- 1.1.6.4 **Option 4** is to do nothing and maintain the status quo.
- 1.1.7 The Consultation Paper set out the Commission’s view that:
  - 1.1.7.1 there is a need to address the potential risks that the reputation of the Island and consumers may be exposed to because of the current absence of a specific regulatory regime for e-money issuers; and
  - 1.1.7.2 Option 1 would be the most appropriate way to achieve this.
- 1.1.8 The Consultation Paper can be obtained from the Commission’s website (see [http://www.jerseyfsc.org/pdf/Consultation\\_Paper\\_No\\_12\\_2009\\_E-money\\_regulation.pdf](http://www.jerseyfsc.org/pdf/Consultation_Paper_No_12_2009_E-money_regulation.pdf)) or by contacting the Commission directly.

## **1.2 Feedback on the proposals contained in the Consultation Paper**

- 1.2.1 Despite circulating the Consultation Paper widely and prominently advertising its issue, the Commission was disappointed to receive only two written submissions.
- 1.2.2 In a bid to obtain more feedback, the Commission met with Jersey Finance and also organised an informal ‘roundtable’ meeting in May 2010 to which practitioners known, or expected to have, an interest in the future regulation of e-money were invited. The roundtable was attended by four practitioners and provided helpful additional feedback.
- 1.2.3 This paper aggregates the feedback received in writing and the oral feedback received at the roundtable.
- 1.2.4 The Commission is grateful to respondents for taking the time to consider and comment on the Consultation Paper, whether in writing or orally by means of the roundtable.

## 2 SUMMARY OF RESPONSES

### 2.1 Structure of this section

2.1.1 The questions posed in the Consultation Paper and a summary of the responses received to each one is presented below. The Commission's thoughts on responses received and how the Commission intends to address the matters raised in the responses is set out in italicised text.

2.1.2 Only one respondent provided comments by reference to specific questions. The comments of respondents who did not cross-refer to specific questions have, for the purposes of this feedback paper, been summarised below under the questions that most closely link to their comments.

### 2.2 Question 4.3.4.1.

**What is your view on the Commission's assessment of the risks potentially arising from the current gaps in regulatory scope?**

2.2.1 Only one respondent questioned whether there was actually a substantive risk that an unscrupulous operator may seek to use the current lack of regulation to take advantage of consumers. However, the same respondent supported the introduction of a regulatory regime that would ensure e-money businesses perform to a minimum standard and would provide consumers with rights in line with best practice elsewhere.

*The Commission is encouraged by the fact that consultation has not revealed any substantive strength of disagreement with its assessment of the risks potentially arising from the current gaps in regulatory scope.*

### 2.3 Question 4.4.6.1.

**Do you agree that the current absence of a specific regulatory regime may act as a disincentive to develop e-money products? If you disagree, please give your reasons.**

2.3.1 There was support for the Commission's view that the current lack of a specific regulatory regime may act as a disincentive to develop e-money products, although one respondent felt that the lack of a specific regime was only a disincentive when an e-money operator wished to access overseas markets.

*The Commission is encouraged by the fact that consultation responses support its view that the current lack of a specific regulatory regime may act as a disincentive to develop e-money products.*

## 2.4 Question 6.2.5.1.

**Do you consider that Option 1 should be adopted? Please give reasons for your answer.**

2.4.1 All but one respondent supported the adoption of Option 1.

*The Commission plans to advise the Minister for Economic Development (the "Minister") that it will seek law drafting time to enable the introduction of an Option 1 regulatory regime (see Section 3, "Next Steps").*

2.4.2 Whilst there was strong support for Option 1, two respondents indicated that their support for that option was subject to caveats.

2.4.3 The first caveat (expressed by both respondents) was that Option 1 should exempt small e-money issuers from the more onerous elements of the regime in order to encourage 'start-up' businesses.

*The Commission would draw respondents' attention to the proposed 'waiver regime' for small firms, as described in paragraphs 20 to 22 in Appendix B of the Consultation Paper.*

2.4.4 The second caveat concerned the issuing of e-money by banks, which (in line with the EU model on which Option 1 is based) would be exempt from having to register as an e-money issuer (although a bank would be required to notify the Commission of its intention to issue e-money and it would still be subject to the conduct of business rules<sup>4</sup>). The particular respondent who raised this caveat was concerned that banks would be able to issue e-money without paying any registration fee and thus leave non-bank e-money issuers to bear the whole cost of the supervisory regime.

*Whilst banks would be exempt from registration they would be required to pay a fee to ensure that each contributes an appropriate amount to cover the cost of the Commission's supervision of their e-money issuing activity.*

2.4.5 One respondent, whilst supportive of Option 1, was of the view that there would not be extensive use of such a regulatory regime until: (i) Jersey's legislation on intellectual property ("IP") had been updated (a process that is currently in train) to provide better protection for IP rights, and (ii) the e-money market is better developed (a 2/3 year time horizon was suggested).

2.4.6 The one respondent who did not express support for Option 1 was of the view that, to support its own particular business model, a more pressing need is the introduction of a regulatory regime to cover all payment service providers equivalent to that of the PSD, rather than the introduction of a regulatory regime for e-money issuers.

*In this regard, the Commission would like to draw attention to the consultation paper it issued in May 2010 on options for meeting the Single Euro Payments Area (the*

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<sup>4</sup> See paragraph 6 in Appendix B of the Consultation Paper.

*“SEPA”) admittance criteria concerned with the regulation and supervision of payment services<sup>5</sup>.*

## 2.5 Question 6.2.5.2.

**What are your views on the key features of the Option 1 regulatory regime (as described in Appendix B)? If you have any concerns, please state what they are and the reason for them. (If you suggest changes to the regime, please set out your rationale.)**

2.5.1 There were no comments provided on the key features of Option 1, other than in relation to the safeguarding arrangements (see section 2.6).

## 2.6 Question 6.2.8.1.

**What are your views on the Option 1 safeguarding measures set out in Appendix B? If you feel that alternative safeguarding measures, including those applied by the Commission to investment and trust company businesses, should be adopted, please explain what they are and give your rationale for them.**

2.6.1 Two respondents (both of which have extensive experience in the e-commerce industry) commented on the Option 1 safeguarding measures.

2.6.2 Both respondents were of the view that funds received in exchange for e-money should be kept off-balance sheet, on trust, in a dedicated client account (notwithstanding that this goes beyond the safeguarding requirements of the EU model on which Option 1 is based).

2.6.3 One of the respondents felt that imposing such a stringent safeguarding requirement would provide a competitive advantage (i.e. as a selling point to consumers) and, although more onerous than the EU standard, would not prejudice Jersey becoming a base for e-money issuers.

2.6.4 The same respondent was of the view that where banks issue e-money they should also be required to apply such a safeguarding measure, and to not require them to do so would be anti-competitive (vis-à-vis non-bank e-money issuers).

*The Commission welcomes the support for safeguarding measures that are stronger than in the EU model. Having said that, the Commission is of the view that it needs to undertake further research into the effect this might have on gaining access for Jersey-based e-money issuers into the EU (see paragraph 6.2.1.2 in the Consultation Paper), where it is likely that reciprocal arrangements would be expected. For example, would setting ‘super-equivalent’ safeguarding requirements cause difficulties because EU-based e-money issuers who wish to enter the Jersey market would also have to meet such safeguarding requirements, when they would not need to in the EU?*

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<sup>5</sup> See [http://www.jerseyfsc.org/pdf/Consultation\\_Paper\\_No\\_6\\_2010\\_SEPA\\_PSD\\_implementation.pdf](http://www.jerseyfsc.org/pdf/Consultation_Paper_No_6_2010_SEPA_PSD_implementation.pdf)

## **2.7 Question 6.2.9.1.**

**What are your views on setting monetary limits in euro?**

2.7.1 Only one respondent answered this question. The respondent saw no difficulty in setting monetary limits in euro.

*The Commission intends to set monetary limits in euro so that the Island would be in line with limits set elsewhere in Europe (including the United Kingdom (the "UK")).*

## **2.8 Question 6.3.6.1.**

**Do you consider that Option 2 should be adopted? Please give reasons for your answer.**

2.8.1 No respondents supported the adoption of Option 2.

## **2.9 Question 6.3.6.2.**

**If Option 2 is your preferred approach, are there elements from the key features of Option 1 (see Appendix B) that you think should be considered for inclusion in a bespoke regime (whether in a modified form or otherwise)? Please give reasons for your answer.**

2.9.1 No respondents supported the adoption of Option 2.

## **2.10 Question 6.4.7.1.**

**Do you consider that Option 3 should be adopted? Please give reasons for your answer.**

2.10.1 No respondents supported the adoption of Option 3.

## **2.11 Question 6.5.4.1.**

**What are your views on doing nothing (Option 4)? Please give reasons for your answer.**

2.11.1 Only one respondent was of the view that nothing need be done at present (see paragraph 2.4.6 above).

## **2.12 Question 6.6.1.1.**

**Are there any other options that the Commission should consider? Please give reasons for your answer.**

2.12.1 No respondents offered other options for consideration.

2.12.2 One respondent encouraged the Commission to move towards a position whereby a business licensed to provide payment services (under legislation equivalent to the PSD) could issue e-money and vice versa. This is the

European Commission's declared intention although it has not set any timetable for achieving this.

*The Commission considers this to be a sensible suggestion which it will keep under consideration as its plans regarding the regulation and supervision of e-money issuers and payment service providers (see Consultation Paper No. 6 2010) develop.*

# 3 NEXT STEPS

## 3.1 Progressing Option 1

- 3.1.1 As indicated in section 2.3 of the Consultation Paper, the Commission intends to discuss the consultation responses with the Minister.
- 3.1.2 In view of the strength of support for Option 1, the Commission plans to advise the Minister that it will seek law drafting time to enable the introduction of a regulatory regime based on the EU approach.
- 3.1.3 At the time of issuing the Consultation Paper, only a draft of the proposed new EU Directive on EMIs was available. Since then however, the EU has adopted the final form of the new directive (Directive 2009/110/EC<sup>6</sup>). Member States must transpose the Directive into national legislation by 30 April 2011.
- 3.1.4 The Commission is of the view that is likely to assist with the law drafting process if drafting instructions were not issued until the UK implementing measures have been agreed by the UK Parliament and reviewed by the Commission.
- 3.1.5 The Commission's understanding is that Her Majesty's Treasury in the UK intends to consult on draft implementing regulations in August 2010 with a view to laying them before the UK Parliament in December 2010, to enable them to come into force by the 30 April 2011 deadline.
- 3.1.6 The Commission therefore intends to put in a bid for time in the 2011 law drafting programme.
- 3.1.7 The draft legislation to implement Option 1 would be subject to public consultation in due course.

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<sup>6</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:267:0007:0017:EN:PDF>

# APPENDIX A

## List of respondents

- Phil Balderson
- Goldmoney (the registered business name of Net Transactions Limited)
- HSBC Bank plc
- Jersey Consumer Council
- PayOffshore Limited
- Voice Commerce Group