



payments and crypto network

Compliance Arrangements

A series of guides addressing operational compliance issues for UK authorised Electronic Money Institutions (“EMI”) and Payment Institutions (“PI”).

Guidance is provided for firms and is not intended as legal advice.

Guide 7: Qualifying Holdings and Close Links

Background

UK authorised EMI and PI businesses must adhere to the regulatory requirements defined in the Electronic Money Regulations 2011 (“EMR”) and the Payment Service Regulations 2017 (“PSR”) as well as associated guidance from the UK’s Financial Conduct Authority (“FCA”).

In addition, following the UK’s exit from the EU, the FCA continue to expect the firms that they regulate to comply with, to the extent that they remain relevant, guidelines published by the European Banking Authority (“EBA Guidelines”).

What is a Qualifying Holding

A Qualifying Holding, also known as a “Controller”, is an individual or firm that does one of the following:

- holds 10% or more of the shares in the firm (including through a parent)
- is able to exercise significant influence over the management of the firm through their holding in the firm or a parent
- is entitled to control or exercise control of 10% or more of the voting power in the firm (including through a parent); or
- is able to exercise significant influence over the management of the firm through their voting power in it or a parent.

Persons with qualifying holdings in an EMI / PI business must be approved by the FCA. Approval would be sought at the time of authorisation or latterly when there is to be a change in ownership (i.e. where a new shareholder is looking to acquire a qualifying holding).



What is a Close Link?

Close Links are either:

- a parent undertaking of the firm
- a subsidiary undertaking of the firm
- a parent undertaking of a subsidiary undertaking of the firm
- a subsidiary undertaking of a parent undertaking of the firm
- a person that owns or controls 20% or more of the voting rights or capital of the firm;
or
- the firm owns or controls 20% or more of the voting rights or capital of the Close Link.

In the group structure of the firm it is likely that the majority of entities will meet the definition of a Close Link.

Approval is not required from the FCA for Close Links (unlike for Qualifying Holdings), however they are subject to annual reporting requirements. In an application for authorisation the Close Links would be listed (as well as being detailed in the group's structure chart).

Seeking approval for Qualifying Holdings

A change in control is considered by the FCA to be a 'significant' change in the circumstances of authorisation. Where it becomes apparent to a firm that there will be a change in control, the FCA expect to be notified in good time before the change takes place.

Firms must provide to the FCA, in relation to each an individual or firm with a qualifying holding, the following information:

- the size and nature of their qualifying holding; and
- evidence of their suitability, taking into account the need to ensure "*the sound and prudent management*" of the EMI / PI.

The word 'suitability' is used to describe the standards required from Controllers rather than the term 'fit and proper' (which is used in relation to EMD / PSD Individuals). However, both terms are commonly interchanged and essentially incorporate the same factors:

- honesty, integrity and reputation
- competence and capability; and
- financial soundness.

*Note that in relation to EMD / PSD Individuals, only 'honesty, integrity and reputation' and 'competence and capability' are assessed. 'Financial soundness' is not within the scope of the FCA's assessment of an EMD / PSD Individual. See, **Compliance Arrangements: Guide 6 – EMD / PSD Individuals**.*

When to seek approval for Qualifying Holdings?

A condition for authorisation is that applicant firms must satisfy the FCA that any individual or firm with a Qualifying Holding in it are fit and proper / suitable. The application would need to include EMD / PSD Qualifying Holdings Forms which would be assessed alongside the other application materials.

For authorised firms, persons that intend to acquire or increase control over an EMI or PI must notify the FCA in writing and in good time before the proposed change takes place. This notification is referred to as a 'section 178' notice and the relevant forms can be found on the FCA's website.

The requirement applies to the prior approval of new prospective qualifying holdings or the acquiring of 'significant influence', in an authorised EMI / PI, as well as changes in existing Qualifying Holdings (both increases or decreases) that take the holding past certain thresholds, as described below.

Prior approval is therefore required from the FCA in relation to:

- A person who decides to acquire control over an EMI / PI must notify the FCA in writing, and obtain their approval before proceeding with the change in control.
- A person who decides to increase control over an EMI / PI, through the thresholds detailed below, must notify the FCA in writing, and obtain their approval before proceeding with the change in control.
- A person who decides to reduce control over an EMI / PI, through the thresholds detailed below, must give the FCA written notice before making the disposal.
- A person who decides to cease to have control over an EMI / PI must give the FCA written notice before making the disposal.

The thresholds, where a person intends to increase or reduce control, which require notification are those that would cause them to cross a control percentage of 10%, 20%, 30% or 50%.

What if a change in control takes place prior to FCA approval?

Persons that acquire, or increase control (in terms of the thresholds detailed above) without prior approval from the FCA may have committed a criminal offence. FCA approval is required before any acquisition of or increase in control can take place.

To ensure that changes in control do not take place without the EMI / PI being notified, which can easily happen where the EMI / PI is part of the larger group and there is restructuring at a parent level, the Controllers could be sent an annual reminder of the necessity to obtain prior FCA approval before acquiring or divesting in shares that would cause the ownership thresholds to be passed.

Responsibility

Responsibility for the monitoring, notification and reporting of any changes in control, or the details of the Controllers, is typically assigned to the Compliance Manager of the EMI / PI.

The responsibility to notify the FCA of a proposed acquisition, increase, reduction or disposal rests with the person seeking or changing control, i.e. the proposed Controller. The Compliance Manager of the EMI / PI should work with the person seeking or changing control to coordinate the notification and timings of the transaction.

The Compliance Manager should maintain a schedule of Controllers and Close Links, which they would periodically review to ensure that it remains up to date. The schedule would also facilitate the completion of the annual reporting of Controllers and Close Links that is required to be submitted to the FCA (see below).

For firms that are part of a group it would be sensible to maintain a group structure chart, including details of entities and their ownership percentages – this may be a document that is

maintained by the group's parent and which could be provided to the firms' Compliance Manager. Note that the submission of a group structure chart forms part of an application for authorisation and there would be an expectation that this would be kept updated once authorised.

The review and update of the chart, reminders sent to Controllers and submission of reports would be coordinated through the use of the Compliance Monitoring Programme - See, ***Compliance Arrangements: Guide 3 - Building a Compliance Monitoring Programme.***

Annual reporting of Controllers and Close Links

EMI / PI businesses must provide to the FCA annual reports on the Controllers and Close Links. The Annual Close Links Report (REP001) and Annual Controller Report (REP002) must both be submitted within 4 months of the firms' accounting reference date. Maintenance of a reporting calendar would be advisable in order not to miss deadlines.

Further detail on reporting and notification obligations can be found here, ***Compliance Arrangements: Guide 8 - Notifications and Reporting.***

