

Market Infrastructure Providers - 2017/18 fee rates

Consultation Paper

CP17/31*

August 2017



How to respond

We are asking for comments on this Consultation Paper (CP) by 16 October 2017.

You can send them to us using the form on our website at: www.fca.org.uk/cp17-31-response-form.

Or in writing to:

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Financial Conduct Authority
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Canary Wharf
London E14 5HS

Telephone:
020 7066 5596

Email:
cp17-31@fca.org.uk

How to navigate this document onscreen



returns you to the contents list



takes you to helpful abbreviations

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1 Summary

Why we are consulting

- 1.1** We are completing the setting of the 2017/18 periodic fee rates for market infrastructure providers (the B fee-block).
- 1.2** We are also setting the 2017/18 periodic fee rate for data reporting service providers (DRSPs – fee-block G25), effective from 3 January 2018 when the Data Reporting Services regulations come fully into effect in the UK.

Who this applies to

- 1.3** This consultation paper (CP) should be read by:
- Recognised investment exchanges (RIEs)
 - Benchmark administrators (BAs)
 - Data reporting services providers (DRSPs)
- 1.4** This CP may also be of interest to other market infrastructure providers in the B fee-block.
- 1.5** This CP contains no material directly relevant to retail financial services consumers or consumer groups, although fees are indirectly met by these consumers.

The wider context of this consultation

- 1.6** Each year we publish our Business Plan which explains how we will use our total annual funding requirement (AFR) to undertake work on our key priorities and ongoing activities. That work program enables us to achieve our overall objective of ensuring that markets work well, and our three supporting objectives of protecting the consumer, promoting competition and enhancing the integrity of markets.
- 1.7** We consult each year on the allocation of the AFR across a series of fee-blocks that reflect broad sectors of the industry and the fee-rates to recover the allocated AFR from the fee-payers that fall within each fee-block.
- 1.8** We published our 2017/18 Business Plan and main fee-rates consultation paper CP17/12 on 18 April 2017 and set out our feedback on responses and final fee-rate rules in a policy statement – PS17/15 on 3 July 2017.



- 1.9** This CP completes that annual consultation in the case of RIEs, BAs and DRSPs.

Next steps

What you need to do

- 1.10** We want firms to provide feedback on our proposed 2017/18 variable fee rates for RIEs and BAs and the annual flat-rate fee for DRSPs.
- 1.11** Please let us have your comments by 16 October 2017, using the online response form on our website or write to us at the address on page 2.

What we will do

- 1.12** We will consider your comments and subject to FCA Board approval in December, we plan to publish our feedback on your comments and final rules in our December 2017 Handbook Notice.

2 Recognised investment exchanges and benchmark administrators

(FEES 4 Annex 2AR – draft rules in Appendix 1)

2.1 In this chapter we are consulting on the proposed 2017/18 variable fee-rates for recognised investment exchanges (RIEs) and benchmark administrators (BAs).

Previous consultation

2.2 From 2017/18, we will calculate the periodic fees for RIEs and BAs based on their size as measured by their annual income from the activities that comprise a necessary part of their business as RIEs or BAs. The definition of this annual income is set out in FEES4 Annex11AR¹ with guidance provided in FEES4 Annex13G.²

2.3 We set out how we will use annual income to calculate the fees, using a combination of minimum fee and variable fee rate bands, in Table 2.1.

Table 2.1: Basis for calculating RIEs and BAs fees

	Band width	Fee
RIEs	Annual income up to and including £10,000,000	£100,000
	PLUS:	
		Fee (£/£ thousand or part thousand of income)
	Annual income over £10,000,000	[tbc]
	Band width	Fee
BAs	Annual income up to and including £3,000,000	£100,000
	PLUS:	
		Fee (£/£ thousand or part thousand of income)
	Annual income over £3,000,000	[tbc]

Source: FEES 4 Annex 2AR

¹ www.handbook.fca.org.uk/handbook/FEES/4/Annex11A.html

² www.handbook.fca.org.uk/handbook/FEES/4/Annex13.html



2.4 We consulted on the introduction of using income to calculate fees for RIEs and BAs in Chapter 4 of CP16/33 (November 2016).³We provided indicative variable fee-rates of £4.70 for RIEs and £13.55 for BAs. These used estimated income and were based on 2016/17 annual funding requirement (AFR) allocation to the B fee-block and recovery from RIEs and BAs. We provided feedback on the responses we received in Chapter 10 of CP17/12 (April 2017)⁴ and published the made rules in Appendix 3 of that CP. Table 2.1 represents those made rules at that time including showing the variable fee rates as still to be confirmed (tbc). Table 2.1 also takes into account the changes we have made to FEES 4 Annex 2AR, set out in Appendix 1 of this CP, so it better reflects how these fees are calculated as consulted on in CP16/33.

2.5 In CP17/12 we also consulted on our 2017/18 annual funding requirement, the allocations of the AFR to fee-blocks (including the B fee-block), and the fee-rates to recover the allocated AFR from the fee-payers in those fee-blocks. In Chapter 4 of CP17/12 we consulted on the 2017/18 fee-rates for the following fee-payers in the B fee-block:

- Recognised auction platforms
- Recognised overseas investment exchanges
- Multilateral trading facilities
- Service companies
- Fees relating to the direct reporting of transactions to the FCA under SUP17

2.6 We provided feedback on the responses we received to these proposed fee rates in Chapter 3 of PS17/15⁵ on the 3 July 2017 and published the made fee rate rules in Appendix 1 of that PS. The fee-rates for service companies (SCs) were based on moving from three fixed-rate income bands to a variable rate above £100,000 of income. These changes were also consulted on in CP16/33 referred to in paragraph 2.4 above.

3 www.fca.org.uk/publication/consultation/cp16-33.pdf

4 www.fca.org.uk/publication/consultation/cp17-12.pdf

5 www.fca.org.uk/publication/policy/ps17-15.pdf

RIEs and BAs proposed 2017/18 fee rates

2.7 We have already consulted on the band thresholds and minimum fees and incorporated them into our fees rules as set out in Table 2.1. We did not consult on proposed 2017/18 variable fee rates through CP17/12 as we needed to wait to receive the relevant income data based on the final income definition and guidance published in CP17/12. We have now received that information and calculated the following proposed 2017/18 variable fee-rates:

- RIEs - £5.58
- BAs - £28.90

2.8 These fee-rates take into account the 2017/18 increased AFR allocation to the B fee-block which included an interim recovery of MiFID II implementation costs set out in CP17/12 which impact RIEs. They also take account of an increased recovery from BAs which reflects greater focus of our resources on this sector.

2.9 Fee-payers can apply these draft variable fee rates to the annual income they have reported to calculate the fees they will pay. Table 2.2 provides some examples to show how you can calculate them.

Table 2.2: Fee calculation examples

	Minimum fee	Variable fee	Total 2017/18 fee
RIE example 1 – annual income £8,545,345	£100,000	£0	£100,000
RIE example 2 – annual income £15,545,345	£100,000	£30,943 (Calculated: £5,545,345 x £5.58/£1,000)	£130,943
BA example 1 – annual income £2,545,345	£100,000	£0	£100,000
BA example 2 – annual income £4,545,345	£100,000	£44,661 (Calculated: £1,545,345 x £28.90/£1,000)	£144,661

2.10 The proposed variable fee rates in paragraph 2.7 and in the draft rules in Appendix 1 are calculated using the income data reported by fee-payers. If during the consultation period fee-payers request that we accept revised data due to a mistake of fact or law by the fee-payer in the original submission, the final variable fee rates could vary from those in Appendix 1.

Q1: Do you have any comments on the proposed 2017/18 variable fee rates for RIEs and BAs?



3 Data reporting services providers

(FEES 4 Annex 11R – draft rules in Appendix 1)

- 3.1** In this chapter, we consult on periodic fee rates for DRSPs (data reporting service providers). DRSPs are entities operating one or more of the categories of data reporting service set out in the Markets in Financial Instruments Directive (MiFID II) - Approved Reporting Mechanism (ARM), Approved Publication Arrangement (APA), Consolidated Tape Provider (CTP). We opened the Gateway for applications on 3 July 2017 to give time for applications to be submitted before the Data Reporting Services (DRS) Regulations come fully into effect from 3 January 2018. None of the fees apply to 'incoming DRSPs' that have been authorised in other EU member states.
- 3.2** We consulted in November 2015 on application fees for DRSPs and the structure of periodic fees⁶ and we summarised the responses in a handbook notice in February 2016.⁷ In July 2016, we confirmed our intention to implement the proposals as consulted on once the DRS Regulations gave us the power to do so⁸ and we published the near-final rules in March 2017.⁹ The DRS Regulations gave us our powers on 3 July 2017, enabling us to publish our final rules, including application fees, on the same date.¹⁰
- 3.3** DRSPs will also have to pay one-off onboarding fees to connect their systems to our Market Data Processor (MDP) so that they can submit reports to us. We included these in our July 2016 consultation, confirming the rates in our March 2017 policy statement. The rates are £20,000 to establish conformance to submit transaction reporting data and £10,000 to establish conformance for other data types. Incoming DRSPs pay 80%.
- 3.4** There are separate application fees for each DRSP category – a full charge of £5,000 for the first category and 50% for each additional category. The 50% charge would apply whether the applications were made at the same time or later. The periodic or annual maintenance fee follows the same structure. There is a fixed rate fee for a single category of DRSP, and then 50% for each additional category. We have not yet set the fee-rate so we are now consulting on the periodic fee for 2017/18.
- 3.5** Since applicants will not receive authorisation until the DRS Regulations come into effect on 3 January, their fees will be pro-rated for the months between authorisation and the end of the fee-year. This means that in practice, no DRSP will pay for more than three months of the 2017/18 fee year (January – March 2018). We will consult on 2018/19 fee rates as part of our annual consultation on fee-rates in spring 2018. At that time, we will also consider whether to allocate to DRSPs a proportion of the costs of implementing MiFID II.

6 Regulatory fees and levies: policy proposals for 2016/17 (CP15/34, November 2015).

7 Handbook Notice 30 (February 2016).

8 Markets in Financial Instruments Directive II Implementation (CP16/19, July 2016).

9 Markets in Financial Instruments Directive II Implementation – Policy Statement I (PS17/5, March 2017).

10 Markets in Financial Instruments Directive II Implementation – Policy Statement II (PS17/14, July 2017).

3.6 In November 2015, we indicated that we expected the fee to fall within the range of £20,000 - £30,000. Now that we have more information about the number of businesses that are likely to apply to become DRSPs and the resources we expect to commit to regulating them, we believe a full flat-rate fee of £25,000 will be appropriate to recover our costs, making the fee for each additional category £12,500. Under our proposal, therefore, a business providing all three categories of DRSP would pay £50,000 per year - £25,000 for one category plus £12,500 for each of the other two categories.

Q2: **Do you agree with our proposal to set the full flat-rate annual fee for data reporting service providers (DRSPs) at £25,000?**



Annex 1

Questions in this paper

- Q1:** Do you have any comments on the proposed 2017/18 variable fee rates for RIEs and BAs?

- Q2:** Do you agree with our proposal to set the full flat-rate annual fee for data reporting service providers (DRSPs) at £25,000?

Annex 2

Compatibility statement

Introduction

1. This annex explains our reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA). Under section 138I of FSMA the FCA is exempt from the requirement to carry out and publish a cost benefit analysis regarding such proposals.
2. When consulting on new rules, we are required by section 138I(2)(d) FSMA to explain why we believe making the proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in s.3B FSMA. We are also required by s.138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This annex also sets out our view of how the proposed rules are compatible with our duty to discharge our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (s.1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.
4. This annex further includes our assessment of the equality and diversity implications of these proposals

Our objectives and regulatory principles

5. Our proposals set out in this consultation are not intended in themselves to advance our operational objectives. However, they will enable us to fund the activities we need to undertake in 2017/18 to meet our responsibilities under FSMA. Therefore, these proposals will indirectly advance our operational objectives of:
 - delivering consumer protection – securing an appropriate degree of protection for consumers
 - enhancing market integrity – protecting and enhancing the integrity of the UK financial system
 - building competitive markets – promoting effective competition in the interests of consumers



6. We also consider that these proposals are indirectly compatible with our strategic objective of ensuring that the relevant markets function well because they will again enable us to fund the activities to meet it. For the purposes of our strategic objective, 'relevant markets' are defined by s.1F FSMA. In the rest of this annex, reference to objectives means both our strategic objective and operational objectives.
7. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in s.3B FSMA. The most relevant regulatory principles are considered below:

The need to use our resources in the most efficient and economical way

- Our fee-raising proposals are set to recover our costs in carrying out our responsibilities under FSMA and associated legislation. We endeavour to carry out this work in the most efficient and economical way possible, concentrating on the areas of activity that pose the greatest risk to our objectives.
- Our priorities for each financial year are set out in our annual Business Plan, which for 2017/18 was published on 18 April 2017. Our Business Plan included our budget, which formed the basis of our £526.9m 2017/18 annual funding requirement (AFR). This was an increase of £7.6m (1.5%) over the AFR for 2016/17 and was driven by an inflation aligned £5.1m (1.0%) increase in our ongoing regulatory activities (ORA) budget and an additional £2.5m for EU withdrawal. A breakdown of our 2017/18 AFR was provided in Chapter 2 of CP17/12.
- When we originally consulted on the structure of the annual fee for data reporting service providers (DRSPs) in 2015, we were unable to propose a rate because we had insufficient information about the supervisory resources we would require or the number of DRSPs we would be supervising. The rate we are now consulting on is determined by our best estimate of our resource requirements.

The principle that a burden or restriction should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction

- The underlying rules for how we raise fees from fee-payers have been consulted on previously.
- Our fees are necessary for us to meet our objectives. As outlined above we take steps to use our resources in the most efficient and economic way, whilst delivering benefits to UK consumers, through our regulatory activities.
- In allocating our costs across the various fee-blocks (regulatory activities) we take into account the risks each fee-block poses to our objectives. This also reflects the resources we apply to these activities
- We have taken an allocation by exception approach to distributing the overall 1.5% increase in our 2017/18 AFR across fee-blocks (the same approach as we have taken for the past three years). The exceptions relate to: changes to our regulatory scope; EU withdrawal costs; Payment Services Directive (PSD) 2 implementation costs; and an adjustment relating to the annual contribution to reducing the FCA pension deficit. We provided details of these exceptions and the impact on allocations across fee-blocks in Chapter 2 of CP17/12.

- We are consulting on a lower rate fee for additional service categories offered by DRSPs. This recognises that there will be economies of scale when we supervise a portfolio of services offered by a single entity compared with individual services offered by separate entities.

The desirability of exercising our functions that recognises differences in the nature of the businesses carried on by different persons we regulate

- The allocation of our AFR set out in Chapter 2 of CP17/12 recognised the differences in the nature of the businesses carried on by the different persons we regulate:
 - fee-blocks are defined by reference to related types of permitted business fee-payers can undertake
 - the proportion of our funding requirement allocated to each fee-block represents the resources we will apply to mitigate risks to our objectives
 - subject to minimum thresholds of size and minimum fees, fee-payers pay fees in each fee-block in line with the scale of the business they undertake in each fee-block
- We have structured our fees to take into account the range of services being provided by DRSPs.

The principle that we should exercise our functions as transparently as possible

- We believe the proposals in this CP have been explained clearly drawing on the related previous consultations in CP16/33 and CP17/12 as referenced in Chapter 2, CP 15/34 and CP 16/19 as referenced in Chapter 3, and this compatibility statement

8. The proposals set out in this CP contribute to enabling us to fund the activities we need to undertake in 2017/18. These activities include taking action intended to minimise the extent to which it is possible for a business carried on: (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s.1B(5)(b) FSMA).

Expected effect on mutual societies

9. We do not expect the proposals in this paper to have a significantly different impact on mutual societies. The impact of the 2017/18 proposals for the fees covered by this CP on authorised firms that are mutual societies is not significantly different from the impact on other authorised firms.



Compatibility with the duty to promote effective competition in the interests of consumers

10. The proposals set out in this CP contribute to enabling us to fund the activities we need to undertake in 2017/18. These activities include meeting our duty to promote effective competition in the interests of consumers.
11. Additionally, the levels of fees set for different types of fee-payers support our objective of promoting effective competition. For example, the allocation of our AFR to fee blocks on which the fee rates are based takes account of the aggregate riskiness of the sector they represent and the recovery of allocations within the fee blocks is based on the size of business undertaken by the individual fee-payers.

Equality and diversity

12. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
13. We believe the proposals in this CP do not raise equality or diversity questions. However, we would welcome comments on any equality and diversity issues you believe may arise from our proposals.

Annex 3

Abbreviations used in this paper

APA	Approved Publication Arrangement
ARM	Approved Reporting Mechanisms
BAs	Benchmark administrators
CP	Consultation Paper
CTP	Consolidated Tape Provider (CTP)
DRSPs	Data reporting service providers
DRS Regulations	Data Reporting Services Regulations
MDP	Market Data Processor
MiFID II	Markets in Financial Instruments Directive
PS	Policy statement
RIEs	Recognised investment exchanges
SCs	Service companies

We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future. We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS



Appendix 1

Periodic Fees (2017/18) and Other Fees (No 2)

Instrument 2017 (draft rules)

[*Editor's note:* The text in this instrument takes into account the changes to be implemented by the Markets and Organisational Requirements (MiFID 2) Instrument 2017 (FCA 2017/38) and is drafted as if all parts of that instrument were already in force.]

PERIODIC FEES (2017/18) AND OTHER FEES (No 2) INSTRUMENT 2017

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance); and
 - (4) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority)
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. Part 1 of this instrument comes into force on [1 November] 2017.
- D. Part 2 of this instrument comes into force on [3 January] 2018.

Amendments to the Handbook

- E. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.

Citation

- F. This instrument may be cited as the Periodic Fees (2017/18) and Other Fees (No 2) Instrument 2017.

By order of the Board
[*date*] 2017

Annex

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Part 1: Comes into force [1 November] 2017

4 Periodic fees

... ..

4 Annex 2AR FCA Fee rates and EEA/Treaty firm modifications for the period from 1 April 2017 to 31 March 2018

Part 1

This table shows the tariff rates applicable to each of the fee blocks set out in Part 1 of *FEES 4 Annex 1AR*.

...

Activity group	Fee payable	
...
B. Benchmark administrators	Band width	Fee (£) (£/£m or part £ thousand of income)
	Annual income up to and including £3,000,000	100,000
	<u>PLUS:</u>	
	<u>Band width</u>	<u>Fee (£/£ thousand or part thousand of income)</u>
	Annual income over £3,000,000	{tbe} <u>28.90</u>
B. Recognised investment exchanges	Band width	Fee (£) (£/£m or part £ thousand of income)
	Annual income up to and including £10,000,000	100,000
	<u>PLUS:</u>	

	<u>Band width</u>	<u>Fee (£/£ thousand or part thousand of income)</u>
	Annual income over £10,000,000	[tbe] <u>5.58</u>
...

...

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Part 2: Comes into force [3 January] 2018

4 Annex 11R Periodic fees in respect of payment services, electronic money, and issuance, regulated covered bonds, CBTL business and data reporting services in relation to the period 1 April 2017 to 31 March 2018

...

Part 5- Tariff rates		
Activity group	Fee payable in relation to 2017/18	
...
G.25	Flat fee (£) for first <i>data reporting service</i> plus 50% flat fee for each additional <i>data reporting service</i> for which the <i>data reporting services provider</i> (other than an <i>incoming data reporting services provider</i>) has authorisation.	[TBC] <u>£25,000</u>
...

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