

10/24\*\*

Financial Services Authority

# Regulatory fees and levies

Policy proposals for 2011/12

October 2010



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- Annex 1:** Compatibility statement and cost benefit analysis
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**Appendix 1:** Draft rules and guidance for consultation response by 26 November 2010 – Fees (Electronic Money Application Fees) Instrument 2011

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**Appendix 3:** Draft rules and guidance for consultation response by 7 January 2011 – Fees (Electronic Money and Miscellaneous Amendments) Instrument 2011

The Financial Services Authority invites comments on the proposals in this Consultation Paper. **Comments on consultation questions 1, 12 and 14-16 are required by 26 November 2010, on questions 2-11 and 13 by 7 January 2011 and on question 17 by 1 March 2011.** See table 1.1 in chapter 1 page 12 for full breakdown.

Comments should be submitted ideally by email to [cp10\\_24@fsa.gov.uk](mailto:cp10_24@fsa.gov.uk).

Alternatively, please send comments in writing to:

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**It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.**

**A confidential response may be requested from us 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 Tribunal.**

For any general queries regarding fees, please firstly consult our website at [www.fsa.gov.uk/Pages/Doing/Regulated/Fees](http://www.fsa.gov.uk/Pages/Doing/Regulated/Fees). You can also contact the Fees Helpline by telephone on (0207 066 1888) and email ([fsafees@fsa.gov.uk](mailto:fsafees@fsa.gov.uk)).

Copies of this Consultation Paper are available to download from our website – [www.fsa.gov.uk](http://www.fsa.gov.uk). Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.



# List of acronyms used in this Consultation Paper

Alternative Instrument Identifier	(Aii)
Annual Funding Requirement	(AFR)
Approved Reporting Mechanisms	(ARMs)
Client money and assets	(CM&A)
Client Money and Asset Return	(CMAR)
Conduct of business	(COB)
Consumer credit jurisdiction	(CCJ)
Consumer Financial Education Body	(CFEB)
Electronic Money Regulations	(the regulations)
Financial Services Act 2010	(the Act)
Financial Services Compensation Scheme	(FSCS)
Financial Ombudsman Service	(the ombudsman service)
Financial Services and Markets Act 2000	(FSMA)
General insurance intermediation	(GII)
International Securities Identification Number	(ISIN)
Markets in Financial Instrument Directive	(MiFID)
Office of Fair Trading	(OFT)
Payment institutions	(PIs)
Personal Investment Authority	(PIA)
Retail Mediation Activities Return	(RMAR)
Second Electronic Money Directive	(2EMD)
Transaction Reporting System	(TRS)
Voluntary jurisdiction	(VJ)





# 1 Overview

## 1.1 Each year we consult on:

- 1) proposed policy changes to the fee and levy regimes;
- 2) our Annual Funding Requirement (AFR) and its allocation between fee-blocks;
- 3) our fee rates for the coming financial year;
- 4) the Financial Services Compensation Scheme (FSCS) management expenses levy limit for the forthcoming financial year;
- 5) the Financial Ombudsman Service (the ombudsman service) general levy for the forthcoming financial year; and
- 6) the Consumer Education Financial Body (CFEB) fees for the forthcoming financial year.

1.2 The annual consultation is relevant to all authorised firms and other bodies that pay fees to us and levies to the FSCS, the ombudsman service and CFEB, as well as to potential applicants for FSA authorisation and listing by the UK Listing Authority (UKLA). We split the annual consultation into two phases. In October we consult on any proposed changes to the underlying policy for the FSA, the FSCS, the ombudsman service and CFEB fees or levies – (1) above. In the following February we consult on the proposed changes to (2) to (6) above. The February consultation includes an FSA summary business plan for the next financial year and coincides with the publication of the FSCS, the ombudsman service and CFEB budgets for the next financial year.

1.3 Additional background material to proposals in either this Consultation Paper or the paper in February 2011 can be found in our Consolidated Policy Statement (PS10/7)<sup>1</sup> on our fee-raising arrangements and regulatory fees and levies. The FSA Handbook rules and guidance on fees are in the Fees manual (FEES) and Annex 3 to this paper outlines the structure of FEES for ease of reference.

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<sup>1</sup> *Consolidated Policy Statement on our fee-raising arrangements and regulatory fees and levies 2010/11 Including feedback on CP10/5 and 'made rules' – published May 2010.*

## Structure of this Consultation Paper (CP)

- 1.4 This CP explains: fee and levy policy proposals for consultation; a clarification of policy; some minor rule changes; and some topics for information.
- 1.5 To identify the chapters most relevant to you, see Table 1.1 at the end of this chapter. This also sets out the closing date for consultation responses and when the rules and/or guidance will be finalised.
- 1.6 There are three annexes and one appendix to this paper:
  - **Annex 1** contains a statement of compatibility of our proposed changes to fees policy with the principles of good regulation.
  - **Annex 2** contains a list of the questions in this CP.
  - **Annex 3** sets out where fee and levy rules and guidance are found in our Handbook.
  - **Appendix 1** contains draft rules and guidance for consultation response by 26 November 2010 – Fees (E-Money and Miscellaneous Amendments) Instrument 2010.
  - **Appendix 2** contains draft rules and guidance for consultation response by 26 November 2010 – Fees (Miscellaneous Amendments and FOS Ltd Rules) Instrument 2010.
  - **Appendix 3** rules and guidance for consultation response by 7 January 2011 – Fees (Electronic Money and Miscellaneous Amendments) Instrument 2011.

## Summary of proposals

- 1.7 The topics covered in this CP are summarised below.

### **Chapter 2 – Second Electronic Money Directive (2EMD) – new regulatory regime**

- 1.8 We are consulting on the application fee and basis for periodic fees for electronic money institutions under the Second Electronic Money Directive (2EMD). We will consult on the actual periodic fee rates in the February 2011 fees CP.
- 1.9 The 2EMD will come into full force on 30 April 2011, with periodic fees applicable from 1 May 2011:
  - **Application fees:** since the regulations will allow us to accept applications from January or February 2011, we are asking for responses by 26 November 2010 so that we are in a position to accept applications from firms as soon as we are permitted to do so. Some businesses will be exempt from paying application fees. For businesses applying to become authorised electronic money institutions we are proposing an application fee of £5,000 and £1,000 for small electronic money institutions.

- **Periodic fees basis:** we are proposing two new fee-blocks – G.11 with a flat rate of £1,000 for small electronic money institutions and G.10 with a variable rate for authorised electronic money institutions. We are initially proposing to use as the tariff base the definition of outstanding electronic money liabilities prescribed in 2EMD, as that will already be available in firms.

The outstanding electronic money liabilities may not be the best indicator of risk and impact for the long term and so we are asking firms whether alternative measures might be more appropriate, such as the number of accounts and the average value of accounts.

### **Chapter 3 – Transaction reporting fees – new payment condition**

- 1.10 We propose to amend the conditions in FEES 4 Annex 3 for firms using the Transaction Reporting System (TRS), so they can pay for the service through individual contractual arrangements. The TRS is one of a number of Approved Reporting Mechanisms (ARMs) investment firms may use to submit transaction reports to us. Its use is not mandatory and implementing the Markets in Financial Instrument Directive (MiFID) in 2007 has extended the range of reporting vehicles available to firms, with a highly competitive market evolving. Extending our offer with the option of contracts will allow the TRS to compete on a more equal basis with other ARMs, helping to ensure a competitive market for ARM services by widening the range of choice and stimulating competition on rates and services.

### **Chapter 4 – CFEB – update on funding arrangements and extension of levy to payment institutions**

- 1.11 We are maintaining for 2011/12 the levy structure we established in 2010/11,<sup>2</sup> which mirrors our structure. Once it has greater operational experience, CFEB intends to review the position and propose a framework that matches its own business activities more closely.
- 1.12 The Financial Services Act 2010 (the Act) covered non-FSMA<sup>3</sup> authorised payment institutions (PIs), but they were not added to the scope of the Act until after we published our CP in February 2010. Consequently, they were not included in our original proposals for the CFEB levy and we said in PS10/07 that we would consult on extending the levy to PIs in fee-blocks G.3 to G.5.
- 1.13 Our proposals are set within the current framework for the CFEB levy and PIs. We are proposing the same minimum CFEB levy of £10 that we have set for FSMA-authorised firms. This will be the only charge for small PIs. The actual levy rates for authorised PIs for 2011/12 will be consulted on in our February 2011 CP.

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2 *Consolidated Policy Statement on our fee-raising arrangements and regulatory fees and levies 2010/11 Including feedback on CP10/5 and 'made rules'* – published May 2010 (chapters 10 and 16).

3 Financial Services and Markets Act 2000 (FSMA).

## **Chapter 5 – FSA fees policy clarification – exclusion of firms’ own funds from calculation of funds under management**

- 1.14 We are issuing a policy clarification and incorporating new guidance into the fees manual to confirm that fund managers in fee-block A.7 should exclude their own funds when calculating the total value of assets under their management as the tariff base for fees.

## **Chapter 6 – For consultation and information – minor changes to the rules**

- 1.15 There are six minor rule changes, only two of which require consultation. The others are technical amendments:

For consultation:

- Definition of International Securities Identification Number (ISIN);
- Separating ombudsman service and FSA fees in FEES 5 of the Fees Manual;

For information:

- Change in terminology in Listing Rules;
- Fee-block: A.16 – no longer applicable;
- Correction to table of periodic fees;
- Amendment to method of payment.

## **Chapter 7 – For discussion – new fee-block for funding client money and assets regulation**

- 1.16 We are setting out, for discussion, our proposals on funding our initiative to enhance our regulatory focus on client money and assets (CM&A). This initiative is a response to the unacceptably high level of risk posed to clients by poor compliance with our CM&A rules (as set out in the CASS Sourcebook), and also to the Government’s call for CM&A regulation to have sufficient independence, priority, and dedicated funding within the UK’s regulatory architecture.
- 1.17 We intend to fund this initiative by allocating all of the costs to a new fee-block and recovering the allocated costs based on the amount of client money and/or assets held by firms with relevant CM&A permissions and authorities. These proposals replace the current more limited distinction made under fee-block A.12 (Advisory arrangers, dealers or brokers (holding or controlling client money or assets or both)) and will better target the allocation and recovery of the funding of enhanced CM&A regulation. We believe this will be a fairer approach as it will minimise cross-subsidy. We do not expect the new fee-block to be introduced until 2012/13 and so our primary purpose here is to set out the main issues and seek firms’ views on them, to inform subsequent policy development.

## **Chapter 8 – Further feedback on responses to our 2009/10 strategic review of fees policy**

- 1.18 This chapter sets out our further feedback on the response we received from the Association of Independent Financial Advisers (AIFA) in the latter stage of the consultation on the strategic review of our cost allocation and fees model which was undertaken during 2009/10. AIFA's propositions were that:
- we should allocate our indirect costs based on the overall proportion of revenues that intermediaries receive in relation to the whole financial services industry; and
  - fees for intermediaries should be based on the proportion of revenue that they receive relative to product providers.
- 1.19 In making our feedback we have sought the views of ten trade associations which represent a reasonable cross-section of the industry including both product providers and intermediaries of retail investment, mortgage and general insurance products.
- 1.20 Our conclusion is that:
- the proportion of the costs allocated to fee-blocks represented by indirect costs is at a level which is not significantly out of line with other regulators and most trade associations were only in support of greater clarity of the terms we use – direct, indirect and overhead costs in our cost allocation, rather than wholesale change. We accept this and will provide greater clarity in our consultation on 2011/12 fee rates in the February Consultation Paper; and
  - there is no agreement between the sectors affected that, in principle, fees for intermediaries should be based on the proportion of revenue that they receive relative to product providers. This may, in part, be because the impact of such a change on the fees paid by affected firms is unknown which would require further research as well as resolution of some of the practical implications such as definition of revenue splits and availability of supporting data from firms. The main consensus across all sectors of the industry is that we should move further towards a system of fees either based on the actual costs of regulating individual firms or on their individual risk profiles. Given that the revenue model is moving in the opposite direction to this we do not believe we can justify undertaking further research or work on it. However, we are happy to consider any further research undertaken by product providers and intermediary market participants working together to address practical issues and impact for both.

### **Deferred consultation**

- 1.21 In CP10/05,<sup>4</sup> we anticipated that this CP would include recommendations for revising the future tariff base for advisory arrangers, dealers and brokers in fee-blocks A.12 and A.13 and corporate finance advisers in A.14. We believe these require further work so have decided to defer consultation.

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<sup>4</sup> *Regulatory fees and levies – Rates proposals 2010/11 and feedback statement on Part 1 of CP09/26* – published February 2010 (Chapter 4).

## **Consultation period**

- 1.22 There are three closing dates for consultation on the proposals in this paper – 26 November 2010, 7 January 2011 and 1 March 2011. See Table 1.1 at the end of this chapter for details.

## **Next steps**

- 1.23 Subject to FSA Board approval and in light of responses to this CP, we expect to publish our feedback and finalise the rules to the timetable set out in Table 1.1 at the end of this chapter.
- 1.24 We expect to publish the final rules and appropriate feedback statements in our annual Consolidated Policy Statement in May 2011, which will reflect the finalised policy and rules from this consultation and the February 2011 fees and levy rates consultation. Fee payers will be invoiced from June 2011 on the basis of the 2011/12 periodic fees, levies and policy changes.

## **Consumers**

**This CP contains no material of direct relevance to retail financial services consumers or consumer groups – although, indirectly, part of our fees are met by financial services consumers.**

**Table 1.1**

<b>Issue</b>	<b>Fee payers likely to be affected</b>	<b>Chapter</b>	<b>Deadline for responses to consultation</b>	<b>Rules finalised</b>
Second Electronic Money Directive (2EMD) new regulatory regime	All electronic money issuers	2	<b>26 November 2010</b> (Application fees) <b>7 January 2011</b> (Periodic fees basis)	January 2011 and feedback published Feedback included in February 2011 CP and rules finalised May 2011
Transaction reporting fees – new payment condition	All firms that have opted to use our transaction reporting system under SUP 17	3	<b>26 November 2010</b>	December 2010 and feedback published
Consumer Financial Education Body (CFEB) – update on funding arrangements and extension of levy to payment institutions	Firms subject to current CFEB levies and payment institutions in fee-blocks G.3 – G.5	4	<b>7 January 2011</b>	Feedback included in February 2011 CP and rules finalised in May 2011
FSA fees policy clarification – exclusion of firms’ own funds from calculation of funds under management	Fund managers in fee-block A.7	5	<b>26 November 2010</b>	December 2010 and feedback published
<b>Minor rule changes:</b> Definition of International Securities Identification Number Separating ombudsman service and FSA fees in FEES 5	Firms and market operators in respect of certain securitised derivatives covered by fee-block A.20 (FEES 4 Annex 9) All firms subject to the ombudsman service levy	6	<b>26 November 2010</b>	December 2010 and feedback published
Change in terminology in listing rules	UK Listing Authority fee-payers in fee-block E	6	Not applicable – for information only	
Fee-block A.16 – no longer applicable	All firms for information only			
Correction to table of periodic fees	Overseas investment exchanges and overseas clearing houses in fee-block B			
Amendment to method of payment	All firms			
For discussion – new fee-block for funding client money and assets regulation	All firms with authority to hold or control client money, or permission to safeguard and administer (or arrange to safeguard and administer) client assets, or may do so in the future	7	<b>1 March 2011</b>	Not applicable
Further feedback on responses to our 2009/10 strategic review of fees policy	All authorised firms in fee-blocks A.1 – A.19 and in particular providers and intermediaries of retail investment, mortgage and general insurance products	8	Not applicable – for information only	

# 2 Second Electronic Money Directive (2EMD) – new regulatory regime

*(FEES 3 Annex 10R, draft rules in Appendix 1 for consultation response by 26 November 2010)*

*(FEES 4 Annex 11, draft rules in Appendix 3 for consultation response by 7 January 2011)*

- 2.1 In this chapter we outline our fees proposals for electronic money issuers in the UK. We are consulting on our application fees, the structure of our annual periodic fees and the split of fees between electronic money and payment services activities. It is a joint consultation with the Financial Ombudsman Service (the ombudsman service) and also covers the levy for the Consumer Financial Education Body (CFEB). It is not proposed that the Financial Services Compensation Scheme (FSCS) levy should apply to electronic money issuers.<sup>5</sup>
- 2.2 The second Electronic Money Directive (2EMD) will be implemented in the UK through the Electronic Money Regulations (the regulations) by 30 April 2011. We expect that the regulations will be made by Parliament at the end of 2010 or the beginning of 2011 and we expect to be able to receive applications for authorisation or registration under the new regime from January 2011.
- 2.3 2EMD establishes some new conduct requirements for all electronic money issuers and new prudential standards for authorised electronic money institutions and small electronic money institutions. The government is currently consulting on the policy options for implementing 2EMD and the draft regulations. The proposals in this CP relate to the regulations as currently drafted and may need to be amended if they are changed following consultation.
- 2.4 We are consulting separately on the consequential changes needed to our Handbook that are made necessary by the implementation of 2EMD (CP10/25).<sup>6</sup> Although our powers and obligations to regulate the issuing of electronic money will come from the regulations rather than from the Financial Services and Markets Act 2000 (FSMA), where possible we have maintained consistency with our wider fees policy.

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5 HM Treasury is consulting on the draft regulations ([www.hm-treasury.gov.uk/8439.htm](http://www.hm-treasury.gov.uk/8439.htm)). One of the questions it raises is whether FSCS cover should be extended to electronic money issued by credit institutions. If the policy changes, we will consult on any implications for the FSCS levy.

6 [www.fsa.gov.uk/pubs/policy/cp/cp10\\_25.pdf](http://www.fsa.gov.uk/pubs/policy/cp/cp10_25.pdf)



More information on this can be found in our annual Consolidated Policy Statement on fees (PS10/07), published in May 2010.

## **Issues for consultation and next steps**

- 2.5 While most proposals in this chapter require a response by 7 January 2011, the proposal on application fees (Question 1) has a deadline of 26 November 2010 so that the rules can be in place as early as possible after the regulations have been made by Parliament. We will provide feedback on this proposal in a Handbook Notice in January 2011.
- 2.6 The remaining proposals relate to the basis on which we would charge variable fees. We will provide feedback in our February 2011 fees CP, which will also consult on proposals for the fee-rates for 2011/12. The fees will be finalised through our consolidated fees policy statement, which we will publish in May 2011. Invoices will be issued from June 2011.

## **Electronic money issuers**

- 2.7 The draft regulations define ‘electronic money issuers’ as any of the following persons when they issue electronic money:
- authorised electronic money institutions;
  - small electronic money institutions;
  - EEA authorised electronic money institutions;
  - credit institutions;
  - the Post Office Limited;
  - the Bank of England, the European Central Bank and the national central banks of EEA States other than the United Kingdom, when not acting in their capacity as a monetary authority or other public authority;
  - government departments and local authorities when acting in their capacity as public authorities;
  - credit unions;
  - municipal banks; and
  - the National Savings Bank.
- 2.8 Of the bodies defined as electronic money issuers, the following do not require authorisation or registration to issue electronic money: the Post Office Limited; the Bank of England; government departments and local authorities, credit unions, municipal banks and the National Savings Bank.

## **Application fees**

- 2.9 Businesses applying to be authorised electronic money institutions or small electronic money institutions will be charged fees to cover our expenses in dealing with their applications.

### **Electronic money issuers exempt from paying application fees**

- 2.10 The following types of electronic money issuers will not be charged an application fee:
- **Electronic money issuers that do not need to be authorised or registered to issue electronic money:** see paragraph 2.8 above.
  - **Credit institutions:** as they have a right to issue electronic money and so must only let us know that they plan to issue electronic money.
  - **Current authorised electronic money institutions:** as they have already been authorised by us and so will be grandfathered into the new regulatory regime.
  - **Inward passporting EEA electronic money issuers:** the appropriate checks will have been conducted by their home regulators, and so they only have to notify us.

### **Authorised electronic money institutions**

- 2.11 We are proposing that businesses applying to become authorised electronic money institutions will have to pay an application fee of £5,000. This reflects our assessment of the complexity and the amount of work we anticipate in processing their application.

### **Small electronic money institutions**

- 2.12 The draft regulations allow electronic money issuers with average outstanding electronic money that does not exceed €5 million to be registered as small electronic money institutions rather than be fully authorised. The applications will be less complex than for authorised electronic money institutions and so we are able to set a lower fee of £1,000.
- 2.13 Current small electronic money institutions will have to apply again to become small electronic money institutions under the new regime because 2EMD requires us to know significantly more about their business, and so they would have to pay the full registration fee.

Q1: Do you agree with our proposed application fees for authorised electronic money institutions and small electronic money institutions?

**This question requires a response by 26 November 2010.**

## Periodic fees

- 2.14 All electronic money issuers will be placed in the new fee-blocks G.10 or G.11 and charged annual periodic fees to recover our costs of supervision and the set-up costs of establishing the processes and systems to support the new regime. Since the new regime comes into force from 1 May 2011, we will start to levy fees in the 2011/12 financial year.

## Small electronic money institutions

- 2.15 We propose to allocate these bodies to fee-block G.11, where they will be charged a flat fee of £1,000.
- 2.16 Existing small electronic money institutions are in fee-block G.4, where they pay the £400 minimum fee charged to PIs. They will be moved to fee-block G.11 after 30 April 2011 and, if successfully registered or authorised, will either remain in G.11 or move on to G.10 as appropriate. Since the draft regulations give them a year, until 30 April 2012, to apply, they will remain on the current rate of £400 for the whole of 2011/12. They will be charged the full rate for G.10 or G.11 from 2012/13. Moving to the full rate immediately after registration or authorisation might otherwise have acted as a disincentive to early application.

## *Authorised electronic money institutions and credit institutions that issue electronic money*

- 2.17 We will allocate these bodies to fee-block G.10. They will be charged a variable rate fee, which is explained in more detail below. This group will include businesses that could have chosen to be registered as small electronic money institutions because they fall below the €5 million threshold, but have decided to become authorised so that they can passport out of the UK into the EEA.

## *Electronic money issuers that do not need authorisation or registration to issue electronic money*

- 2.18 We propose to place these electronic money issuers into the fee block which best reflects their average outstanding electronic money. Those with an average outstanding electronic money of less than €5 million will be placed in fee-block G.11 and those with a higher average outstanding electronic money will be placed in fee block G.10. We propose in our wider consultation on 2EMD, CP10/25, that these bodies should provide us with their average outstanding electronic money on a half yearly basis if they begin to issue electronic money. We can use this information to allocate them to a fee block to calculate their fees.

## Tariff base

- 2.19 We base our variable fees on a common metric, known as a tariff base, which best represents the size of the business a firm undertakes in that particular fee-block. We use the size of the business as a proxy for the impact on our statutory objectives should

that business fail. We propose to base the tariff on average outstanding electronic money, as defined in Article 2(4) of 2EMD, because we are confident firms will already have the data to hand.

- Businesses applying for authorisation or registration will have to estimate their average outstanding electronic money in their business case.
- authorised electronic money institutions and small electronic money institutions will have to provide their average outstanding electronic money in the reporting returns on capital requirements.
- The survey referred to in paragraph 2.21 confirmed that credit institutions have this information available and we will write to each credit institution that issues electronic money to request the information at the appropriate time of each year.

2.20 The definition in 2EMD is:

**‘Average outstanding electronic money:** average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month.’

2.21 While preparing this CP, we wrote to authorised electronic money institutions and credit institutions that issue electronic money, inviting them to supply information on this basis for the six months ending 31 July 2010. This was partly to confirm that the data was available and partly to help us set tariff bands based on size of firm. We received a good response, confirming that they could supply the information. We informed the firms that we would write to them again in January, seeking the same information for the six months ending 31 December 2010 as a more up-to-date basis for calculating the fees for 2011/12.

2.22 We propose to use average outstanding electronic money, as defined in 2EMD, as the tariff base for fees for the G.10 fee-block in 2011/12.

Q2: Do you agree that small electronic money institutions and exempted electronic money issuers with an average outstanding electronic money of less than €5 million should be in a separate fee block, G.11, and pay a flat fee of £1,000?

Q3: Do you agree that we should use the definition of average outstanding electronic money in 2EMD as the tariff base for periodic fees for the electronic money issuers in fee-block G.10 in 2011/12, using the figure supplied on application or notification and the figure for the six months ending 31 December 2010 for firms that are already authorised?

2.23 If we retain average outstanding electronic money as the tariff base in the future, we will continue to apply it to the six months ending 31 December before the relevant fee-year. However, we are aware that there are different opinions on the suitability of average outstanding electronic money as a long-term measure of impact risk, and

when we wrote to authorised firms, we also asked them for their informal views on whether they believed we should be considering alternative metrics, such as the number of electronic money accounts.

- 2.24 We received one suggestion – that electronic money turnover might be a better measure, since outstanding liabilities would include dormant accounts that do not generate any business activity. The same objection would apply to the total number of electronic money accounts. We understand that firms may not be able to distinguish between dormant and active accounts. We would welcome views from other firms on the most appropriate measures of impact risk, and whether any of them raise particular definitional issues that we should be aware of to ensure consistent reporting.

Q4: Do you think we should retain average outstanding electronic money for the six months ending 31 December before the relevant fee-year as the tariff base for fee-block G.10? Or, do you think we should consider alternative measures as better indicators of impact risk and, if so, what should they be?

### **Tariff bands**

- 2.25 One of our objectives in asking authorised electronic money institutions and credit institutions issuing electronic money for preliminary data was to get a sense of the range of electronic money liabilities held by them so that we could decide what the appropriate tariff bands might be. Our proposed bandings are set out in Table 2.1, along with some indicative fee-rates, based on our current estimates of the costs of setting up and running the electronic money regulatory regime.
- 2.26 Some firms in fee-block G.10 will fall below the threshold for small electronic money institutions because they applied for authorisation, as explained in paragraph 2.17, so that they could passport out of the UK. Since our regulatory engagement with them will be greater than with similar-sized firms in fee-block G.11, we propose to charge a flat fee of £1,500 per year for the first £5 million of electronic money liabilities.
- 2.27 For electronic money liabilities beyond £5 million, we propose a variable rate per £ million or part of £ million. This model will be familiar to firms now in fee-block A.1 (deposit acceptors). The final rate per £ million will be calculated from the total number of firms among which the costs are to be divided and the scale of their outstanding liabilities, but we do not yet know how many electronic money issuers there will be, or how large they will be. Our best estimates on the limited information currently available to us suggest we might arrive at a rate per £ million of the order of £100 to £150. To give a sense of what that might mean for individual firms, in Table 2.1 we have indicated the range of fees that would be paid on this basis by a firm with outstanding liabilities of £10 million, £50 million or £100 million.

**Table 2.1: Proposed tariff bands for electronic money issuers in fee-block G.10 with indicative fee rates for firms of different sizes**

Tariff band: £ million of outstanding liabilities	Tariff rate: @ £100 – £150 per £m above £5m
<b>Firms with outstanding liabilities of £10 million</b>	
Up to £5 million	£1,500
>£5 million – £10 million	£500 – £750
<b>Total Fee</b>	<b>£2,000 – £2,250</b>
<b>Firms with outstanding liabilities of £50 million</b>	
Up to £5 million	£1,500
>5 million – £50 million	£4,500 – £6,750
<b>Total Fee</b>	<b>£6,000 – £8,250</b>
<b>Firms with outstanding liabilities of £100 million</b>	
Up to £5 million	£1,500
>£5 million – £100 million	£9,500– £14,250
<b>Total Fee</b>	<b>£11,000 – £15,750</b>

2.28 As with the fees for fee-block A and payment institutions (PIs), our costs allocated to the new fee-blocks will be recovered, above the minimum fee, in line with the amount of tariff base that each firm reports – straight line recovery. This means that the periodic fee rates will be the same for each of the tariff bands set out in Table 2.1. The tariff bands represent our moderation framework, which allows our straight line recovery policy to accommodate a targeted recovery of costs within a fee-block, on an exceptions basis, if it can be justified. This moderation can be either side of the straight line recovery and is achieved by applying a premium or discount to tariff data measures. Currently we only apply moderation (a premium) to certain bands in fee-block A.1 (deposit acceptors). We do not propose to apply any moderation to the new fee-blocks, and if we do in future, such proposed moderation would be consulted on.

2.29 These examples are purely illustrative. We will present more definitive figures in February, when we consult on proposed fee rates for 2011/12.

Q5: Do you agree with our proposed tariff-bands for electronic money issuers in G.10?

### **Discount for inward-passporting EEA authorised electronic money institutions and credit institutions that issue electronic money**

2.30 We propose to use the same tariff base for inward-passporting EEA-authorised electronic money institutions and credit institutions that issue electronic money as for the UK equivalent, with a percentage discount on periodic fees. This is the model we apply for other fee-blocks, as supervisory responsibilities are split between the home and host states. In this case, we are supervising conduct of business (COB),

but will not be responsible for regulating prudential requirements and monitoring compliance with authorisation conditions. We believe that our COB responsibilities are comparable to those we undertake for payment services institutions, and so we propose to apply the same discount of 40% as an allowance for the prudential supervision we are not undertaking.

Q6: Do you agree with our proposal to offer a discount of 40% on the variable periodic fees charged to inward-passporting EEA-authorized electronic money institutions and credit institutions that issue electronic money in fee-block G.10?

### **Applications part-way through a financial year**

- 2.31 When a firm becomes newly authorised during a fee-period, we apply a discount to reflect how much of the financial year remains. We will apply the same model to electronic money issuers, as set out in Table 2.2. Please note that, as indicated in the table, there will be no discount on the fees for 2011/2012 for firms brought into the new regime when it comes into force in May 2011.

**Table 2.2: Proportion of full-year periodic fee payable for firms registered or authorised during the financial year**

Quarter in which firm is registered or authorised	Proportion of full-year fee payable
1 April to 30 June inclusive	100%
1 July to 30 September inclusive	75%
1 October to 31 December inclusive	50%
1 January to 31 March inclusive	25%

### *Financial penalties*

- 2.32 We are empowered under the draft regulations to impose financial penalties in certain circumstances. We must not take account of any sums we have or may receive by way of penalties when fixing the level of our fees. Instead, we are required to publish and operate schemes for ensuring that any penalties imposed are applied for the benefit of other electronic money issuers.
- 2.33 This means we will not take financial penalties into account when calculating the level of our Annual Funding Requirement (AFR) and the fee rates resulting from the AFR. Neither will we treat financial penalties as income – rather, it will be treated as a liability owed to fee payers. This means that, where a financial penalty is received, we will apply it firstly to meet the enforcement costs of the case. Any remaining penalty will be applied for the benefit of other electronic money issuers in proportion to their contributions in the year the penalty is distributed.

## **Provision of payment services**

- 2.34 Electronic money issuers will automatically receive permission for all payment services integral to issuing electronic money, but will only pay fees in fee-block G.10 or G.11 as electronic money issuers. They will not be charged additionally as PIs or small PIs.
- 2.35 If they wish to offer additional payment services that are not directly related to their electronic money business model, they need to notify us. We will not charge them an application fee, but they will be subject to periodic fees as a PI or small PI and be put into fee-block G.3 or G.4 as appropriate. This will be in addition to their fees in fee-block G.10 or G.11. Similarly, if we consider that a business applying for authorisation or registration as an electronic money issuer, or notifying us of their intention to issue electronic money, proposes to offer payment services that fall outside its electronic money business model, we will put it into both G.10 or G.11 for issuing electronic money and G.3 or G.4 for their payment services.
- 2.36 If a firm that is already a PI or small PI applies to become an electronic money institution, it will pay the appropriate application fee and give up its authorisation as a PI or registration as a small PI. If all its payment services are directly related to its electronic money business model, then it would move out of its PI fee-block and only pay electronic money periodic fees in G.10 or G.11 as appropriate.

Q7: Do you agree with our proposals for charging additional fees to authorised electronic money institutions and small electronic money institutions that offer payment services that are not integral to the issuance of electronic money?

## **Consumer Financial Education Body (CFEB)**

- 2.37 All electronic money issuers paying FSA fees will also be required to contribute towards the costs of CFEB unless they fall into the following two categories:
- firms authorised under FSMA will already be paying the CFEB levy in their original 'A' fee-blocks, so should not be double-charged; and
  - the draft regulations exempt the Bank of England, government departments, local authorities, credit unions, municipal banks and the National Savings Bank from the levy.

The same exceptions apply to our proposals for extending the CFEB levy to PIs in Chapter 4 (paragraph 4.9).

- 2.38 CFEB was set up under the Financial Services Act 2010 to enhance:
- the understanding and knowledge of members of the public of financial matters (including the UK financial system); and
  - the ability of members of the public to manage their own financial affairs.



The CFEB levy is accommodated into the existing FSA fees framework. It mirrors our fees structure and is applied to the current tariff bands. For electronic money issuers, this would mean adding the levy to the tariff-bands presented in Table 1.1. The levy we are proposing for small electronic money institutions in fee-block G.11 and firms with outstanding electronic money liabilities up to £5 million in fee-block G.10 is £10, which is the minimum CFEB levy for FSMA-authorized firms and PIs. Based on this year's estimates, the variable rate on liabilities above £5 million might have been in the range of £10.00 to £12.00. We will consult on the proposed rates for 2011/12 in February 2011.

Q8: Do you agree with our proposals for applying the CFEB levy to electronic money issuers?

## The Financial Ombudsman Service

### Background

- 2.39 CP10/25 proposes extending the compulsory jurisdiction of the ombudsman service to small electronic money institutions and to the electronic money issuers that are exempted from authorisation. The ombudsman service also consulted on retaining issuing electronic money as an activity in its voluntary jurisdiction.<sup>7</sup> In this section, we and the ombudsman service consult on the associated funding arrangements and set out proposals for how authorised electronic money institutions, small electronic money institutions and the exempt electronic money issuers will contribute to the general levy for the ombudsman service. No changes are proposed to the ombudsman service's case fees.
- 2.40 The ombudsman service is funded by a combination of a general levy on firms that fall within its jurisdictions and a case fee paid by firms (currently £500 for the fourth and any subsequent cases). The general levy is calculated on the basis of industry funding blocks that, for the compulsory jurisdiction, tend to mirror our own fee-blocks. Each industry block has its own tariff base, which is used to determine an individual firm's contribution to the general levy. There is a minimum levy for individual firms in each industry block, with no maximum limit. Firms are allocated individual levies on a 'straight line' basis (i.e. their levy increases uniformly in line with the amount of 'relevant business' transacted).

### Proposals

- 2.41 Credit institutions (such as banks and building societies) and authorised electronic money institutions are already subject to the compulsory jurisdiction of the ombudsman service for issuing electronic money. Under our Fees Manual, these firms currently fall into Industry Block 1.<sup>8</sup> However, because of changes in the way that

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<sup>7</sup> The voluntary jurisdiction allows businesses to sign up with the ombudsman service for complaints that would not otherwise be covered by its compulsory or consumer credit jurisdictions. It can include activities directed at UK consumers by businesses based in the EEA and complaints about acts or omissions that took place before the business was covered by the ombudsman service.

<sup>8</sup> Fees Manual, FEES 5: Financial Ombudsman Service Funding, Annex 1 R.

electronic money is regulated, authorised electronic money institutions will no longer be FSMA-authorised firms or fall within this block when 2EMD is implemented.

- 2.42 Small electronic money institutions and the electronic money issuers that do not need to be authorised are currently subject to the compulsory jurisdiction of the ombudsman service for payment services, but not for issuing electronic money. These firms fall within Industry Block 11 in relation to their payment services activities. They will be brought under the compulsory jurisdiction of the ombudsman service for issuing electronic money for the first time when 2EMD is implemented.
- 2.43 We need to make new arrangements for electronic money issuers as a result of these changes and propose to establish a new industry block called '18 – electronic money issuers'. This will cover all electronic money issuers that fall within the compulsory jurisdiction of the ombudsman service for issuing electronic money.
- 2.44 Credit institutions will continue to fall into Block 1 as well as the new Block 18. However, we propose to exclude electronic money accounts from the tariff base for Block 1. This will ensure that these institutions will not pay two sets of levies for the same business.
- 2.45 Under 2EMD, authorised electronic money institutions and small electronic money institutions will automatically be entitled to undertake payment services integral to issuing electronic money. The levies in new Block 18 will cover payment services that are integral to issuing electronic money. These firms will not now fall within Block 11, unless they wish to offer additional payment services that are not directly related to their electronic money business model. If they do, they will need to notify us and will be subject to levies in Block 11 as well as Block 18.
- 2.46 This approach mirrors that proposed by us for our fees, which groups all electronic money issuers in the same fee-block. It is also in line with our general principle that firms should contribute to the costs of the ombudsman service in a fair and equitable way with minimal cross subsidy, based on regulated activity.

Q9: Do you agree with our proposals for a new, separate, industry block for electronic money issuers?

### **Tariff base and levy**

- 2.47 The tariff base is the measure used to calculate each firm's share of any general levy. In practice, we use a size of business proxy for the potential impact of any firm.
- 2.48 We are proposing that the tariff base for electronic money issuers (except for small electronic money institutions) should be based on average outstanding electronic money, as defined in Article 2(4) of 2EMD. We think that this is an appropriate guide for the potential number of complaints from the business to the ombudsman service. We have considered whether the levy should instead be based on the number of electronic money accounts. However, some firms may have a large number of electronic money accounts with a low average balance, which give rise to few, if any, complaints.

- 2.49 In addition, this is the same tariff base as we are proposing to use for our fees, so this would minimise the cost to firms of us collecting the tariff data. As set out in paragraph 2.19, we are confident that firms will already have this data to hand.
- 2.50 As usual, we will charge a minimum levy for this industry block. For small electronic money institutions, we propose that the levy should be charged on a flat-fee basis.

Q10: Do you agree with our proposal that the tariff-base for electronic money issuers:

- should be based on the average outstanding electronic money (except for small electronic money institutions); and
- that small electronic money institutions should pay a flat fee?

### **Voluntary jurisdiction**

- 2.51 The ombudsman service proposes that levies for electronic money issuers participating in the voluntary jurisdiction should be calculated on the same basis as proposed above for electronic money issuers in the compulsory jurisdiction.
- 2.52 This will involve establishing two new industry blocks in the voluntary jurisdiction: 12V for payment services providers and electronic money issuers and small electronic money institutions undertaking payment services; and 13 V for electronic money issuers. The tariff-base for 13 V would be based on average outstanding electronic money, as for electronic money institutions in the compulsory jurisdiction. The proposal has no impact on the fees paid by payment service providers as the tariff base would remain unchanged.
- 2.53 There would also be a separate flat fee (on the same basis as for the compulsory jurisdiction) for small electronic money institutions who join the voluntary jurisdiction in order to cover complaints about issuing electronic money that relate to acts or omissions before 30 April 2011.<sup>9</sup>

Q11: Do you agree with the ombudsman service's proposals that:

- there should be a new, separate, industry block for electronic money issuers participating in the voluntary jurisdiction; and
- the tariff-base should be based on average outstanding electronic money?

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<sup>9</sup> The voluntary jurisdiction would only apply to small electronic money institutions' past business as, by definition, such businesses elsewhere in the EEA will not be able to passport their services into the United Kingdom.

# 3 Transaction reporting fees: new payment condition

*(FEES 4, Annex 3, draft rules in Appendix 3 for consultation response by 21 November 2010)*

- 3.1 In this chapter, we propose to amend the conditions for firms using the Transaction Reporting System (TRS), so they can pay for the service through individual contractual arrangements rather than through fees as at present. This proposal only affects firms that are, or are intending to become, clients of the TRS. The TRS is one of a number of Approved Reporting Mechanisms (ARMs) through which investment firms submit to us the transaction reports required under SUP17 of our regulatory handbook. They may use one or many methods to submit their reports to us: through an ARM (including TRS), which collates the data for them; through a third party acting on their behalf; through the regulated markets or multilateral trading facilities on which the transaction was executed; directly to us through their own systems; or through any combination of these.
- 3.2 Implementing the Markets in Financial Instrument Directive (MiFID)<sup>10</sup> in 2007 resulted in a substantial increase in the number of reportable instruments and we have seen a corresponding increase in the total number of transaction reports that firms submit to us. Before implementing MiFID, we received an average of 2 million transaction reports per day. This increased after MiFID to 5 million per day and as the market has evolved, particularly with the increase in competing market venues and prevalence of algorithmic<sup>11</sup> and high-frequency trading systems, we now regularly see transaction reporting volumes in excess of 9.5 million per day, with peaks of nearly 14 million records. We expect this volume to increase further as the market continues to develop – including reporting Alternative Instrument Identifier (Aii) transactions.
- 3.3 At the same time, MiFID extended the range of reporting vehicles available to firms and a highly competitive market has evolved for ARM services. Along with the high volumes of transactions, this has resulted in reduced transaction reporting fees, combined with innovation through improvements in the services offered to client firms.

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<sup>10</sup> Directive 2004/39/EC

<sup>11</sup> Algorithmic trading is the use of computer programs to submit trading orders to electronic trading platforms with the program deciding aspects of the order such as the timing, price, or size of the order. In many cases, the orders are submitted without any human intervention.

- 3.4 The TRS has been granted approval as an ARM for authorised firms to submit transaction reports in any financial instrument. While firms are required to submit the data to us, they are not obliged to use the TRS to do so. They may use other reporting systems. Those firms that use the TRS pay fees for the service and these are currently set out in the fees section of the FSA handbook. Unlike other regulatory fees, the TRS fees are only mandatory if firms choose to use our TRS.
- 3.5 The income we receive from the TRS covers the costs of providing the service. Any surplus is put towards the recovery of our costs in monitoring market activities, particularly contributing towards the costs of developing and operating our transaction monitoring system. This helps to mitigate the overall level of fees levied on reporting firms.
- 3.6 Our TRS fees, based on an annualised volume tier structure, have not changed to keep pace with the growth in transaction volumes or the evolution of the market. Half of the smaller contributors pay no transaction fees at all because they generate less than 1,000 transactions per year, even though they receive the same level of service as other users of the system. By contrast, the fees paid by the larger contributors have increased disproportionately because volumes of transactions are so much higher than envisaged when the structure was established. Several large users have moved part or all of their transaction reporting to other ARMs, which offer a range of charging structures, often tailored to individual requirements and at an overall lower cost. The loss of valuable clients could reduce the surplus generated through TRS, resulting in higher fees for all firms subject to transaction monitoring.
- 3.7 Having reviewed the TRS fees structure, we consider that its rigidity places it at a significant competitive disadvantage to other ARMs. The annual cycle of fee-setting restricts our capacity to respond rapidly to changes in the market, while a regime of universally prescribed fee rates and conditions prevents us from tailoring our services and charges to the demands of individual clients – so our offer of rates and services is unattractive compared to our competitors. We risk seeing a further reduction in our customer base, provoking in the long run a rise in other regulatory fees to compensate for the loss of income. There is a further risk that the inflexibility of our fee structure may be limiting our ability to place downward pressure on transactions reporting fees across the market.
- 3.8 We believe TRS provides a high quality service which can compete on equal terms with other ARMs. This will help to ensure a competitive market for the provision of ARM services by widening the range of choice and stimulating competition on rates, quality and ancillary services.
- 3.9 To achieve this, TRS needs to be able to operate on similar terms as other ARMs – reacting promptly to market change and with the ability to negotiate individual contracts with clients. We consider that, under current market conditions, there is a strong case for establishing individual contracts for TRS clients that set out the terms and conditions under which the TRS is provided and the level of service firms should expect to receive.

3.10 We propose introducing the new contracts from January 2011, but it will take time to extend them to all firms. Until they have contracts, firms will continue to fall under the TRS fees structure, as set out in our handbook. We therefore propose to introduce a condition that would limit the application of FEES 4 Annex 3 to those firms that have not entered into a contract with us for use of the TRS service. The amended scope would read: ‘This table shows the fees payable for the firms using the FSA’s Transaction Reporting System that do not have a written contract with the FSA for use of the system.’

Q12: Do you agree with our proposal to amend FEES 4 Annex 3 as proposed in paragraph 3.10?

# 4 Consumer Financial Education Body (CFEB)

## Update on funding arrangements and extension of levy to payment institutions

*(FEES 7; FEES 4, Annex 11R, draft rules in Appendix 3 for consultation response by 7 January 2011)*

- 4.1 This chapter presents an update on the CFEB levy and proposals to extend it to payment services institutions (PIs) in fee-blocks G.3 (large PIs) and G.4 (small PIs) from 2010/11. The draft Instrument is in Appendix 1.

### **Update on the CFEB levy – FEES 7**

- 4.2 The Financial Services Act 2010 (the Act) required us to establish a new Consumer Financial Education Body (CFEB) to enhance:
- the understanding and knowledge of members of the public of financial matters (including the UK financial system); and
  - the ability of members of the public to manage their own financial affairs.

The Act received Royal Assent on 8 April 2010 and CFEB was set up on 26 April 2010.

- 4.3 The Act gives the FSA powers to: make rules setting fees to recover the relevant costs from authorised firms and PIs; and collect the fees and pay the amounts received to CFEB, after deducting our own costs incurred in collection. We have brought all references to the CFEB levy together into a new chapter in the FSA Handbook, FEES 7. FEES 7 currently applies to all authorised firms in fee-blocks A.0 – A.19. It does not apply to registration or authorisation fees, nor to fees for the ombudsman service.
- 4.4 The CFEB levy is accommodated into the existing FSA fees framework. It mirrors our fees structure and is applied to the current tariff bands. We have applied the provisions in FEES 4.3.4, so firms that register or extend their permissions during the year have their fees discounted. Any relevant changes to our fees following consultation are applied automatically to the CFEB levy.
- 4.5 We originally proposed this structure in CP10/05 to ease firms' transition to the new regime. Except in a few instances (specified in the CP) we did not attempt to

reassess firms' contributions to the costs of CFEB, as we did not yet have evidence about the demands firms or their customers might make on CFEB's work. We explained that we would review the position once CFEB had practical operational experience. Most respondents to the consultation accepted our proposals on this basis as a short-term solution. In our feedback, we acknowledged that the allocation of costs between fee-blocks reflected our priorities rather than CFEB's and that it might be possible in time to identify an alternative framework that was less dependent on our activity-based structure.

- 4.6 CFEB has only been in existence as an independent body for six months, so is not yet in a position to review the levy structure and propose an alternative. We have agreed that the current framework should be retained for 2011/12. In future, as the funding arrangements for the new regulatory regime as a whole continue to be developed, we will work with CFEB to propose a levy structure that remains simple to collect, but more closely matches their own strategy and business activities.
- 4.7 Our current proposals for PIs are accordingly prepared within the existing structure of the CFEB levy and reflect our levy for PIs. They will be included in the wider review of the levy, so may change in the future.

### **Application of CFEB levy to PIs**

- 4.8 PIs were not included in our original proposals for the CFEB levy because they were added to the scope of the Act after we published CP10/05 in February 2010.
- 4.9 Our proposals are limited to the non-FSMA authorised PIs in fee-blocks G.3 and G.4. This is because:
- We said in PS10/07 that we would exclude FSMA-authorised firms to avoid charging them twice. All of the PIs in fee-block G.2 (certain deposit acceptors) are firms authorised under FSMA that are already paying the CFEB levy under fee-block A.1. Similarly, some FSMA-authorised firms have become authorised as PIs in fee-block G.3, and so they are paying the CFEB levy in their original 'A' fee-blocks.
  - The Act does not empower us to apply the CFEB levy to the institutions in fee-block G.5 – i.e. the Bank of England, local authorities and government departments.
- 4.10 The same exceptions apply to our proposals for extending the CFEB levy to electronic money issuers in Chapter 2 (paragraph 2.35).
- 4.11 As we do not yet know what CFEB's budget will be in 2011/12, we are presenting our proposals on this year's figures. This will enable firms to consider the impact they would have had on their current fees. Firms should note that the figures may change when, as part of our annual cycle of consultation, we propose fee rates in February 2011 based on the CFEB budget for 2011/12.
- 4.12 The CFEB levy is applied to authorised firms by distributing the costs between fee-blocks A.0 to A.19 in line with their contribution to our total Annual Funding Requirement (AFR). We propose to use the same model for distributing the CFEB levy between PIs.



4.13 In 2010/11, our AFR for fee-blocks A.0 to A.19 was £397.1 million and CFEB's AFR was £32.9 million. This made the CFEB levy equivalent to an average addition of roughly 8.3% across the board. As our AFR for fee-blocks G.3 to G.5 was £875,000 in 2010/11, PIs' contribution towards CFEB would have been around £72,500 if the levy had applied. There would have been a corresponding reduction in the charges to FSMA-authorized firms but, spread across the £32.9 million AFR, the impact on fees would have been marginal.

4.14 Our proposals to recover these costs from PIs are set out below.

- **Minimum CFEB levy:** In 2010/11, the minimum FSA fee for PIs is £400. The minimum additional CFEB levy is £10. Either or both figures may change when we consult on fee-rates for 2011/12 in our February 2011 CP. If the £10 minimum levy had been in force this year, the 470 small PIs in fee-block G.4 would have contributed £4,700 towards recovery of the costs of CFEB.
- **Annual CFEB levy for large PIs:** we propose to recover the balance – £67,794 on 2010/11 figures – through an additional levy on large PIs and other institutions in fee-blocks G.3 and G.5.

4.15 This would be calculated on the tariff base from which their FSA annual fees are derived. That is their relevant income as defined in FEES 4, Annex 11, Part 3. In 2010/11, our FSA fee rate is £0.48508 per thousand or part-thousand pounds of relevant income. The CFEB levy required to recover £67,794 would have amounted to an additional £0.04787 per thousand or part-thousand pounds.

Q13: Do you agree with the funding framework we are proposing for payment institutions contributing towards the CFEB levy?

4.16 In future, whenever firms are brought within our remit, but outside FSMA – most commonly under EU directives – we will take a view at the time about whether they should be liable for the CFEB levy and ensure that the appropriate provisions are included in the regulations or other instruments implementing the new regime.

# 5 FSA fees policy clarification: exclusion of firms' own funds from calculation of funds under management

*(FEES 4, Annex 1, Part 2)*

- 5.1 In this chapter, we confirm that fund managers in fee-block A.7 should exclude their own funds when calculating the total value of assets under their management as the tariff base for fees. We understand that some firms find the definition in the manual unclear, so we are clarifying the position to ensure that the rules are interpreted consistently across the industry.
- 5.2 The tariff base is defined in FEES 4, Annex 1, Part 2 as: 'The total value... of all assets... in portfolios which the firm manages, on a discretionary basis..., in accordance with its terms of business'. The detailed list of inclusions and exclusions following this summary does not specifically mention firms' own funds. However, limiting the calculation to funds managed 'on a discretionary basis' and in accordance with the firm's 'terms of business,' indicates that the activity must be conducted on behalf of a client.
- 5.3 This interpretation is reinforced by the definition of a discretionary investment manager in the Glossary: 'a person who, acting only on behalf of a client, manages designated investments in an account or portfolio on a discretionary basis under the terms of a discretionary management agreement'. A fund manager acting on a discretionary basis must then be acting 'only' for a client and under a discretionary management agreement. That is to say, it is implicit that the rules do not cover the management of firms' own funds.
- 5.4 Some confusion may have arisen where colleagues to whom fund managers are accountable when handling the firms' own funds are referred to internally as 'clients'. This can be a convenient way of describing some of the features of their respective roles, but is not a definition of a contractual relationship.
- 5.5 The rules were drafted on the assumption that firms' own funds would not be included in the tariff base. Since one firm has admitted that it misinterpreted our intention, we propose to insert a note into the definition of the A.7 tariff base explaining more explicitly that assets managed by a firm on a discretionary basis should exclude its own assets.

The draft rule is in the instrument in Appendix 1.

5.6 The question on which we are consulting is:

Q14: Do you agree that our proposed addition to FEES 4, Annex 1, Part 2 makes it clear that firms should exclude their own funds when calculating the tariff base under fee-block A.7?

# 6 For consultation and information – minor changes to the rules

## Overview

- 6.1 This chapter sets out the minor changes we propose to make to the Fees Manual and Handbook Glossary to correct or clarify certain existing fee provisions. The first part of the chapter covers those minor changes to the Fees Manual and Handbook Glossary we propose to consult on. The second part covers amendments that we propose to make to the Fees Manual, but are not consulting on because they are regarded either as falling within the scope of past consultations or are technical updates that do not require consultation and do not affect the basis on which we levy fees.

## For consultation

- 6.2 The minor changes we propose to consult on are:
- adding the definition of International Securities Identification Number (ISIN) to the FSA Handbook glossary; and
  - separating ombudsman service and FSA fees in FEES 5 Annex 1 of the Fees Manual.
- 6.3 Firms affected by the first proposal – set out in paragraphs 6.5 to 6.8 below – are in the A.20 fee-block. Firms subject to the ombudsman service’s compulsory jurisdiction are affected by the second proposal, set out in paragraph 6.9 to 6.13.
- 6.4 These proposals require a response by 26 November 2010.

## Definition of International Securities Identification Number (ISIN)

*(FEES 4, Annex 9, draft rules in Appendix 2 for consultation response by 26 November 2010)*

- 6.5 We propose to add the definition of ISIN to the FSA Handbook glossary to clarify its meaning in FEES 4 Annex 9, which sets out the tariff-base for fee-block A.20.

- 6.6 Fee-block A.20 applies to firms and market operators who contribute towards the recovery of additional IS development costs of enhancing SABRE II to enable transactions to be processed using the Alternative Instrument Identifier. Firms who pay this levy fall within fee-blocks A.10, A.12, A.13 and UK exchanges in fee-block B.
- 6.7 The fees payable by market operators in fee-block A.20 are calculated on the basis of: ‘market operators providing facilities for trading in securities derivatives that do not identify those securities derivatives, using an International Securities Identification Number’.
- 6.8 The term ‘International Securities Identification Number’ is not defined in our Handbook glossary. While the meaning of this term may generally be understood by the markets, to avoid any ambiguity in the rules relating to fees payable by market operators under FEES 4 Annex 9, we propose to insert the following definition into our Handbook glossary:

‘International Securities Identification Number (ISIN): a 12-character, alphanumeric code which uniquely identifies a financial instrument and provides for the uniform identification of securities at trading and settlement.’

Q15: Do you agree with the proposed definition of International Securities Identification Number?

## **Separating ombudsman service and FSA fees in FEES 5 of the Fees Manual**

*(FEES 5, Annex 1, draft text in Appendix 2 for consultation response by 26 November 2010)*

- 6.9 This proposal is a joint consultation by the FSA and the ombudsman service.
- 6.10 The ombudsman service is funded by a combination of annual fees (the general levy) and case fees. All authorised firms pay a general levy, even if they have not had any cases referred to the ombudsman service, unless they have notified us that they are exempt. Consumer credit licensees pay a consumer credit jurisdiction (CCJ) fee, collected by the Office of Fair Trading (OFT). Participants in the voluntary jurisdiction (VJ) also pay an annual levy depending on the sectors in which they operate. The case fee (currently £500) is paid by all firms, consumer credit licensees and VJ participants, although the first three cases for any respondent in the financial year are free of charge.
- 6.11 We approve the annual budget for the ombudsman service and set the level of the general levy for authorised firms. The OFT sets the level of the CCJ fee, which is paid for a five-year period. The ombudsman service sets the general levy for VJ participants and the level of the case fee.
- 6.12 To clarify the different responsibilities for setting these fees and levies, we propose to redraft Annex 1 of FEES 5 of the Fees Manual, and make consequential changes to other parts of the Fees Manual. These proposals do not change the level of fees and levies for 2010/11. They merely simplify the Manual.

6.13 As these changes are for minor clarification or simplification, we are allowing only one month for consultation. Subject to the responses we receive, we propose to make the changes by the end of this year, so that they are in place in advance of the normal ombudsman service and FSA consultations on the rates for 2011/12.

Q16: Do you agree with the proposed changes to Annex 1 of FEES 5 and consequential changes to other parts of the Fees Manual as set out at Appendix 2?

## **For information**

6.14 This section sets out the technical amendments we are making to the Fees Manual that do not require consultation. We have included them in this CP so that firms are aware of all changes we are making to the Fees Manual. These changes have no impact on the basis firms are charged fees.

6.15 Firms who may be particularly interested in these amendments are in fee-block E, issuers of listed and non-listed securities or their sponsors. Also, overseas clearing houses and overseas investment exchanges in the fee-block B.

6.16 We propose to amend the following fee provisions:

- FEES 3.2.7(q)(i), to reflect the change in terminology in the Listing Rules from ‘Primary Listing’ to ‘Premium Listing’.
- FEES 4 Annex 1, A.16 fee-block, to clarify that this fee-block which contained the pensions review levy firms is no longer applicable.
- FEES 4.2.11, table of periodic fees, amend the modified periodic fee for an overseas investment exchange and overseas clearing house to align with the modified periodic fees in FEES 4 Annex 6, Part 2.
- FEES 3.2.3 and FEES 4.2.4, to reflect the re-branding of Switch to Maestro as a method of payment of fees.

## **Change in terminology in Listing Rules**

6.17 Following consultation on changes to the UK’s listing regime in CP09/24 and CP09/28, the term ‘primary listing’ has been replaced with ‘premium listing’. This change came into effect on 6 April 2010, so we need to amend our fees rules to reflect the new terminology. We are amending the rules relating to application fees for super transactions set out in FEES 3.2.7(q)(i) so that reference in that provision to ‘primary listing’ is replaced with ‘premium listing’.

## **Fee-block A.16 – no longer applicable**

6.18 Fee-block A.16 (pensions review levy firms) contained firms who were liable to pay the pensions review levy to the Personal Investment Authority (PIA) in 2001/02. The pensions review was completed in 2005 and the regulatory costs of this work fully

recovered in the 2004/05 financial year. No firms remain in this fee-block and no firms can go into it in future because the tariff base is linked to the PIA, an authority that no longer exists. Therefore, we are amending our fee rules (FEES 4 Annex 1) to clarify that this fee-payer activity and tariff base is no longer applicable.

#### **FEES 4.2.11: Correction to the table of periodic fees**

- 6.19 Following consultation in February this year on our fees and levies for the financial year 2010/11 (CP10/5), the fees payable by an overseas investment exchange that becomes recognised during the financial period was increased to £40,000, and for an overseas clearing house the fees increased to £70,000. These fee increases should also have been reflected in the table of periodic fees under FEES 4.2.11, but were not – as a result of this, FEES 4.2.11 still shows the previous fee rates. We are amending FEES 4.2.11 so that the fees payable by the relevant overseas investment exchanges and overseas clearing houses are in line with the amounts set out under FEES 4 Annex 6.

#### **FEES 3.2.3, FEES 4.2.4: Amendment to method of payment**

- 6.20 The fees rules set out a number of ways a firm can submit payment of its fees. One of the methods of payment listed is Switch. Following Mastercard's purchase of the Switch brand it has been re-branded as Maestro, so we are amending FEES 3.2.3 and FEES 4.2.4 so that reference to Switch as a method of payment is removed and replaced with Maestro.

# 7 For discussion – new fee-block for funding client money and assets regulation

- 7.1 This chapter contains proposals on funding our initiative to enhance our regulatory focus on client money and assets (CM&A). It will be of interest to all firms with the authority to hold or control client money, or permission to safeguard and administer (or arrange to safeguard and administer) client assets, or may do so in the future. This initiative is a response to the unacceptably high level of risk posed to clients by poor compliance with our CM&A rules (as set out in the CASS Sourcebook), and also to the government's call for CM&A regulation to have sufficient independence, priority and dedicated funding within the UK's regulatory architecture.
- 7.2 We intend to fund this initiative by allocating all of the costs to a new fee-block and recovering the allocated costs based on the amount of client money and/or assets held by firms with relevant CM&A permissions and authorities (as set out below). These proposals replace the current, more-limited distinction made under fee-block A.12 (advisory arrangers, dealers or brokers (holding or controlling client money or assets or both)) and will better target the allocation and recovery of the funding of enhanced CM&A regulation. We believe this will be a fairer approach, as it will minimise cross-subsidy. We do not expect the new fee-block to be introduced until 2012/13. Here we set out the main issues and seek firms' views on them, to inform subsequent policy development.

## **Targeting the funding of client money and assets regulation**

- 7.3 The protection of client money and assets is vital to both consumer protection and market confidence and is an area of high priority to the government and the FSA. Thousands of UK-based firms hold billions of pounds of their clients' property, for both retail and professional clients. Across the industry, the level of compliance with our CASS requirements is too low, exposing clients and the UK financial system to unacceptable risk. We are therefore taking action to address risks relating to client money and assets compliance.



- 7.4 One of the actions we have taken is to create a specialist client assets unit, to drive forward our oversight of firms' CASS compliance. The unit includes specialist CASS supervisory, policy, risk identification and data analysis teams. Together with the increased effort being directed toward CM&A issues by frontline supervision and enforcement, establishing the unit represents a significant additional commitment to increasing the resource that we allocate to CM&A regulation.
- 7.5 At present, only certain firms with authority to hold or control client money or permission to hold or arrange the safeguarding of client assets pay increased FSA fees as a result. These are firms to which fee-block A.12 applies. However, there are other fee-blocks that can include firms also subject to CASS requirements and our enhanced regulatory approach, but where such a distinction is not made. These fee-blocks are:
- A.1 – Deposit acceptors;
  - A.7 – Fund managers;
  - A.9 – Operators, trustees and depositaries of collective investment schemes and operators of personal pension schemes or stakeholder pension schemes); and
  - A.19 – General insurance mediation.
- 7.6 This will be hard to justify as the level of resource dedicated to CM&A issues rises. Some of these increasing costs will be picked up by other firms, which do not hold CM&A themselves but are in fee-blocks with firms that do. This would conflict with our commitment to avoid cross-subsidy between firms as far as possible and where it is proportionate to do so.
- 7.7 In addition, the government is clear that CM&A regulation must be accorded sufficient resource, including dedicated resource, and an appropriate degree of priority within the UK's regulatory framework. Establishing the unit is part of our response to the government's intentions in this area.
- 7.8 Consequently, we propose to introduce a new fee-block where all of the costs of our enhanced CM&A regulation will be allocated and recovery targeted from firms that hold CM&A subject to CASS.

### **New fee-block for CM&A regulation**

- 7.9 We set out below, for illustrative purposes, how the new 'CASS' fee-block might operate.

#### *Scope of the new CASS fee-block*

- 7.10 We propose that the costs allocated to the new fee-block will be recovered from all firms subject to CASS with permission to hold client assets or authority to hold client money, in relation to either investment or general insurance intermediation (GII) business.

7.11 The following firms would be out of scope:

- Firms with authority to control but not hold client money, or those that only arrange the safeguarding and administering of client assets. We expect our work on these firms to be much less resource intensive because the main CM&A risks reside with holders of client assets and money. In addition, there would be significant practical difficulties in recovering allocated costs from firms that only control. Firms carrying out investment business that only have authority to control client money or arrange safekeeping do not submit returns – such as the new Client Money and Asset Return (CMAR) – that would allow us to tailor our cost recovery to the size of this aspect of their business. While keeping these firms out of scope will inevitably involve some cross-subsidisation between holders and controllers/arrangers, we believe that this would be insignificant, and justifiable against the costs of the steps we would have to take to avoid it. If we included controlling within scope, thousands more firms would have to fill out the CMAR, submit it to us and we would have to collect and analyse the resulting data.
- Firms with the ability to hold or control client money in relation to home finance business (as this activity is out of scope for CASS).
- General Insurance Intermediary (GII) firms carved out of CASS due to their use of the risk transfer provisions, where it relates to all of their business.

7.12 Inwardly passporting EEA branches (holding client money and assets) would only be in scope to the extent that they were subject to CASS.

7.13 This proposed scope would mean that some firms that have permissions and authority to hold assets or money, and do not currently pay toward CM&A costs, would start paying. Other firms who have permission and authority to hold assets and money, who already contribute toward CM&A costs, may find that they pay less in relative terms, although they may pay more in absolute terms as the level of resources we dedicate to CM&A regulation rises. Likewise, those firms that only have authority to control client money or arrange safeguarding, may find that they are paying lower fees as a result.

#### *Recovery of costs allocated to the new CASS fee-block – tariff base*

7.14 We recover costs allocated to fee-blocks by using a common metric, known as a tariff base, which in our view best measures the size of the business activity as a proxy for the impact to our statutory objectives should that firm fail (impact risk). We propose that the tariff base for the CASS fee block should be the amount of client money and/or assets held by the firm. This is consistent with our approach for other fee-blocks, where we seek to use an impact risk measure that can be applied to all firms in a specific fee-block and where the costs to firms and ourselves in collecting the supporting data (tariff data) is proportionate.

7.15 For firms carrying out investment business, this impact-risk metric would be the highest client money and/or asset balances a firm reports in a given reporting period. This information will be collected by the CMAR.

- 7.16 The same principles will apply to firms carrying out GII business. The impact-risk metric will also be the client money balance but, to avoid disruption of changing the existing Retail Mediation Activities Return (RMAR), the metric will remain the client money balance at the end of the reporting period.

### *Nil returns*

- 7.17 We propose that firms in scope for the new CASS fee block would not be charged if they report, for a given period, a 'nil return' for client assets held, or client money held (i.e. segregated client money, rather than, for example, client money held as a banking deposit by that firm, were that firm to be a deposit taker).

### *Revised A.12 and A.13 fee-blocks*

- 7.18 The introduction of the new CASS fee-block will mean that the current distinction between A.12 (advisory arrangers, dealers or brokers (holding or controlling client money or assets or both)) and A.13 (advisory arrangers, dealers or brokers (not holding or controlling client money or assets or both)) will no longer be required. We therefore propose no longer to use the A.12 fee-block and to change the scope of A.13 so that only the costs of regulating the activities carried out by advisory arrangers, dealers or brokers will be allocated to it (i.e. no CM&A costs will be allocated) and recovered from the firms that have the related permissions.

## **Other bodies**

- 7.19 In developing a new CASS fee-block and tariff base for CM&A regulation, we will consider the implications for other bodies, such as the ombudsman service, FSCS and CEFB.

## **Consultation and implementation**

- 7.20 We will develop detailed proposals in light of industry comments to the above. We anticipate bringing the proposals forward for consultation (with draft rules) during 2011/12 for implementation in 2012/13.

Q17: Do you have any views on the proposals for the future allocation and recovery of the costs of client money and assets regulation?

# 8 Further feedback on responses to our 2009/10 strategic review of fees policy

- 8.1 This chapter sets out further feedback on responses to our consultation on the strategic review of our cost allocation and fees model which was undertaken during 2009/10. The strategic review applied to the authorised firms that pay fees in the 'A' fee-block and include banks, building societies, insurers, investment managers, securities firms and retail, mortgage and general insurance intermediaries.
- 8.2 This feedback relates to the response we received from the Association of Independent Financial Advisers (AIFA) who called for fundamental change to our overall cost allocation and fee-block structure for intermediaries. Their propositions were that:
- we should allocate our indirect costs based on the overall proportion of revenues that intermediaries receive in relation to the whole financial services industry; and
  - fees for intermediaries should be based on the proportion of revenue that they receive, relative to product providers.
- 8.3 This response was received in the latter stages of the consultation and, although we provided some feedback on their propositions at the time (in PS10/7)<sup>12</sup> we also said that we would assess them further and report back in this CP.

## Strategic review changes and consultation

- 8.4 The changes from the strategic review were mainly the introduction of:
- a single minimum fee of £1,000 per firm (in 2010/11), which represents the minimum costs of a firm being regulated and include the costs of the firm contact centre, regulatory reporting and policing the perimeter; and
  - 'straight line' recovery of the costs allocated to the 'A' fee-blocks to ensure that the level of fees paid by firms is directly linked to the size of the permitted business that the firm undertakes in the fee-block that applies to them. We use size of permitted business as a proxy for the impact on our statutory objectives should that business fail.

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12 PS10/7: *Consolidated Policy Statement on our fee-raising arrangements and regulatory fees and levies 2010/11. Including feedback on CP10/5 and 'made rules'* (May 2010) – Chapter 13, paragraphs 13.21 to 13.26.

- 8.5 The consultation was carried out in two stages:
- In CP09/26<sup>13</sup> (November 2009) we set out our proposals. These were formulated following informal views taken from the industry through an open question in the February 2009 periodic fees CP, trade association workshops and meetings with both practitioner panels<sup>14</sup> [stage 1 consultation].
  - In CP10/5<sup>15</sup> (February 2010) we provided feedback on the industry responses received to CP09/26. Taking into account those responses, we consulted on the proposals as they would apply to the fee rates for 2010/11 [stage 2 consultation].
- 8.6 In PS10/7 (May 2010) we provided feedback on the industry responses received to CP10/5 and set out the fee rules for implementing the final changes for the recovery of our annual funding requirement (AFR) for 2010/11.

## Further feedback on AIFA propositions

- 8.7 In making our feedback, we have sought the views of eight trade associations, which together with AIFA and its sister trade associations represent a reasonable cross-section of the industry, including product providers and intermediaries. We facilitated a workshop, in conjunction with AIFA and the consultants they had engaged, to provide the industry representatives with an opportunity to understand the basis for the propositions and to give their views. We shared the outcome of that workshop with the trade associations that were unable to attend to obtain their views.

### AIFA propositions presented at the workshop

AIFA's consultants described their understanding of the current system for allocating regulatory costs to fee-blocks.

- The FSA sets out its priorities in its annual business plan, from which the annual funding requirement (AFR) was calculated. Business units then estimated how their resources would be distributed between the different activities on which the fee-blocks were based. These figures provided the direct costs of regulation for each fee-block.
- Some overheads, such as administration costs which could be attributed to specific activities, were included in the direct costs.
- There were also indirect costs that could not be attributed to specific activities. These were allocated to fee-blocks in proportion to the direct costs, along with remaining overheads.

The allocation of indirect costs resembled the system of Equi Proportionate Mark-Up (EPMU) used in regulated utilities to allocate indirect costs in a simple and proportionate way. They were concerned that their analysis indicated that, once the overheads were

13 CP09/26: *Regulatory fees and levies: policy proposals for 2010/11* (November 2009).

14 Practitioners Panel and the Smaller Businesses Practitioner Panel.

15 CP10/5: *Regulatory fees and levies – Rates proposals 2010/11 and feedback statement on Part 1 of CP09/26* (February 2010).

taken out, the direct costs allocated to fee-blocks might in practice be as low as 31% of the total. They considered that it would not, therefore, be appropriate to apportion such a large remaining volume (69%) of indirect costs and overheads in line with direct costs. This they considered was higher than in other regulators – for example, indirect costs for the Financial Services Board of South Africa represented 40% of total costs, for Ofwat it was 30% and for Ofcom it was 25%.

This appeared to produce some irregular allocations to fee-blocks. If, for example, the fee-blocks were aggregated into related activities (e.g. bringing together the different intermediary specialisations), then the total regulatory costs attributed to intermediation were almost equivalent to those allocated to deposit-taking, which would not be proportionate to their relative risk.

The allocation of costs is important in regulated markets and they had concerns about several aspects of the FSA's model compared to that used by Ofwat and Ofcom. In particular:

- **Cost causation and risk alignment** – the costs recovered should arise out of their causes/risk the sector or activity represents, but high indirect costs and overheads raised questions about whether the FSA's model met this requirement.
- **Distribution of firm benefit and consumer preferences** – the FSA's model did not appear to take into account the benefits different types of firms received from regulation and consumers preferences.
- **Competition, affordability/proportionality** – the fees structure did not promote competition, given that a high level of costs fall on intermediaries compared to product providers, even though intermediaries bare the risk of advising and creating the market for the providers' services. Fees should be affordable to firms and proportionate to their ability to pay.
- **Transparency** – the system was complex and difficult to understand.

Two recommendations were made to resolve these concerns:

**Recommendation 1 – Ramsey pricing:** This would enable the FSA to allocate the indirect costs and overheads according to the price elasticity of firms – their ability and willingness to pay – taking into account their place in the market and the benefits they receive from regulation. The consultants' proposed that the indirect costs, instead of being allocated pro rata, should be allocated to each fee-block according to the profitability of the activities within it. Since defining profit could be problematic, a practical alternative would be to use revenue as a proxy. This represents an economically efficient way of recovering costs (while allowing the recovery of overheads). Used by 'Sky' when charging for listings on its electronic programme guide (EPG).

**Recommendation 2 – Adjusted fee-block system:** the fee-block system could be realigned to reflect the segmentation of the market between the manufacturer of financial products (e.g. investment products, insurance products etc) and the advisers (intermediaries), with their combined regulatory costs allocated in line with the product manufacturer's and adviser's share in the revenue chain.

## Our feedback

Our AFR and its allocation to fee-blocks reflects the resources needed to meet our priorities as set out in our annual Business Plan(BP) to mitigate the risks identified in our Financial Risk Outlook (FRO). The FRO is agreed and the BP is set by the FSA Board and we account for our performance in meeting our priorities through our Annual Report.

The fee rates consulted on each February also reflect the allocation of the AFR to fee-blocks (sectors) and we adjust allocations to take account of industry responses to our consultations. However, the assessment of the risks posed by the different sectors contained in the FRO and our plan and budget in the BP for mitigating those risks is not subject to consultation.

Our current cost allocation to fee-blocks takes into account the total costs of regulating the sectors represented by the fee-blocks and the overall risk profile (impact and probability of failure) of the firms in the fee-blocks. This minimises the possibility of cross-subsidy between sectors. When determining the level of allocated costs to recover from firms in a particular fee-block, the size of the firms' business is used as a proxy for the impact on our statutory objectives should those firms fail. This is now done on a straight-line recovery basis, so that the larger firms in the fee-block pay more. The exception is deposit takers where a premium rate is applied to the firms at the top end of this fee-block. The measure of the size of business (tariff data) varies between fee-blocks but revenue is used for some.

The most consistent response from the industry to our strategic review was that we should move further towards a system that allocates and recovers costs from firms based on either the actual costs of regulating them individually or their individual overall risk profile (impact and probability of failure). In CP10/5 in February (page 38), our feed back to the industry highlighted that this would present us with significant operational challenges and costs and, although such approaches were not ruled out, we did not see us being in a position to move to either approach in the foreseeable future.

There was some ambiguity in the consultants' use of the terms 'indirect costs' and 'overheads' and this may have affected the assumptions they had applied in their analysis. We did not recognise the figure 31% for direct costs – 70% was a more realistic figure for 2010/11. Overheads – such as the costs of accommodation and common services – are not the same as 'indirect costs'. 'Indirect costs' are costs that business areas are unable to attribute directly to fee-block activities. The proportion of indirect costs had reduced to about 30% in the latest fees round, as we continued to allocate more of our costs directly to fee-blocks.

With regard to Recommendation 2, regulatory fees are not a tool for resolving any imbalances between manufacturers and distributors of financial products.

## **Other industry responses and our feedback**

Below we set out the responses from the trade associations that were able to attend the workshop and our feedback.

The most consistent responses were:

- The current system of allocation between direct and indirect costs and the relationship with overheads lacks transparency. Comparisons with other regulators should be treated with caution, unless the definitions were checked for compatibility. Some regulators 'direct' costs might be what we describe as 'indirect'. Such uncertainties might be reduced if we were more clear about precisely what we mean by these terms. Also, our fees model should be fair to all and economically robust.

### **Our feedback**

We accept that we could be clearer in our explanation of direct, indirect and overhead costs. We will clarify these terms in our February 2011 fees rates Consultation Paper and in our annual consolidated fees Policy Statement in May/June 2011 by including a glossary. This should reduce the risk of misunderstanding.

- There was a preference for us to move further towards a fees regime that reflects the risk profile (in terms of impact and probability of default) of firms on an individual firm basis and/or the actual costs of regulating individual firms.

### **Our feedback**

We acknowledge this but, as we explain above, we do not believe we will be in a position to move to either approach for the foreseeable future.

Further industry views and our feedback:

- Some trade associations expressed concern that one outcome of the recommendations would be lower fees for intermediaries, leaving the balance to be made up by other firms. This would not be welcomed by the members of the trade associations concerned. There was not a direct correlation between risk and size of firm. Some firms on low margins might present high risks and generate higher regulatory costs. Also, fees should be set to recover the costs incurred by us in regulating firms, taking account of the complexity of their activities, not to reflect firms' share of the market. It was also, difficult to assess Recommendation 2 without any information on what the affect would be on actual fees paid by the sectors affected compared to what they pay now.

### **Our feedback**

To provide an impact analysis on fees of Recommendation 2 a considerable amount of work would need to be done on defining what represents the revenue of the product manufacturers and the revenue of the intermediary. Also, the revenue data that we currently collect does not always distinguish between revenue received for



different financial products – this is particularly the case for firms that undertake several regulated activities under one legal entity. We would need firms to provide that breakdown.

- One trade association suggested that although regulatory fees may not be able to resolve any imbalances between manufacturers and distributors of financial products, we did in practice set the landscape in which firms operated. The example they gave was the Mortgage Market Review (MMR) where their view was that the FSA intended to move the risk of assessing affordability from the intermediary to the provider. They wanted to see this reflected in a shift of regulatory costs and therefore lower fees for the mortgage intermediary.

### **Our feedback**

Both lenders and intermediaries have always had a role to play in assessment of affordability. One of the aims of the MMR is to more clearly define these responsibilities. In CP10/16,<sup>16</sup> we set out how we expect lenders to assess affordability moving forward. We will discuss the role of the intermediary in the mortgage sales process when we issue our MMR Distribution and Disclosure CP later this year.

- Two trade associations commented further that a critical gap in the regulatory fees structure was the absence of a regulatory dividend for compliance, with responsible firms paying less.

### **Our feedback**

We believe that this would more likely be addressed by further basing the levying of fees on the costs of regulating individual firms or their overall risk profile. It would not be addressed if the total regulatory costs or the regulatory costs of a number of sectors were recovered purely based on revenue.

## **Conclusion**

- 8.8 As indicated above, the proportion of the costs allocated to fee-blocks represented by indirect costs is at a level not significantly out of line with other regulators, and most trade associations were only in support of greater clarity rather than wholesale change. We accept this and will clarify the terms ‘direct’, ‘indirect’ and ‘overhead’ costs in our consultation on 2011/12 fee rates in our February Consultation Paper.
- 8.9 We do not believe there is any agreement between the sectors affected that, in principle, fees for intermediaries should be based on the proportion of revenue that they receive relative to product providers. We acknowledge that this may, in part, be because the affect of such a change on the fees paid by affected firms is not currently known. Further research would be needed on how such a revenue model would work in practice and an impact analysis would need to be carried out for the firms affected. This would need to be done before we could consult formally on such proposals.

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16 CP10/16: *Mortgage Market Review – Responsible Lending* (July 2010)

8.10 We also acknowledge that the main consensus across all sectors of the industry is that we should move further towards a system that allocates and recovers our costs from firms either based on the actual costs of regulating them individually or based on their individual risk profiles. Although we are not proposing to take such steps for the foreseeable future, we do not believe we can justify undertaking further research on the revenue model, as such a model is moving in the opposite direction to where the majority of the industry wants us to go. However, we are happy to consider any further research undertaken by product providers and intermediary industry participants working together to address the practical issues and impact for both.

# Compatibility statement and cost benefit analysis

1. When we issue rules for consultation, we are required by Section 155(2)(c) of the Financial Services and Markets Act (FSMA) to explain why we believe our proposals are compatible with our general duties under Section 2 of FSMA and our statutory objectives, which are set out in Sections 3 to 6 of FSMA. This is known as a ‘compatibility statement’.
2. This annex contains the compatibility statement regarding our fees policy proposals. Section 155(9) of FSMA exempts us from having to carry out a cost benefit analysis on our policy proposals for fees and levies for the ombudsman service and CFEB.

## **Compatibility with our statutory objectives**

3. The fees policy proposals and draft rules we are consulting on build on our earlier consultations on the policy framework for our funding arrangements, and we believe that the current proposals are compatible with our general duties in Section 2 of FSMA.
4. In discharging our duties, we are required to act in a way that is compatible with our statutory objectives (market confidence and market stability, protection of consumers, and reduction of financial crime), and CFEB’s objective of enhancing public understanding of financial matters.

## **FSA fees policy proposals**

5. As we have stated in previous consultations on fees, our fee-raising arrangements support each of our statutory objectives because they provide the resources that allow us to meet them. They are not intended in themselves to act as vehicles to achieve our statutory objectives.

## Compatibility with the principles of good regulation

6. We have outlined in previous fees consultations how our general policy framework has been influenced by the ‘have regard’ factors in Section 2(3) of FSMA (also known as the ‘principles of good regulation’). Below, we consider how the proposals in this CP take account of these principles.

### *The need to use our resources in the most efficient and economic way*

7. In implementing the Second Electronic Money Directive and developing the enhanced regulatory focus on safeguarding clients’ assets, our controls ensure that our set-up and running costs, which are to be recovered through fees, are kept to a minimum.
8. The proposals to clarify on the reporting of funds under management will help firms to improve their understanding of the rules and assist in calculating their tariff base more efficiently. Minor changes in the fees handbook have simplified and clarified particular aspects, encouraging good internal management. Separating the FSA and the ombudsman service rules in FEES 5 will make that part of the manual easier to use.

### *The burden to be imposed should be proportionate to the benefits*

9. To investigate whether the burden of a proposal is proportionate to the benefits that are expected to arise from its imposition, we normally carry out a cost benefit analysis. As explained above, rules relating to fees are excluded from this requirement. However, we believe we have taken care in framing our proposals to impose burdens that are proportionate.
10. Earlier this year, we introduced a straightforward and simple funding structure for the new CFEB levy, causing minimum disruption to our own and firms’ systems. We are maintaining this for the coming year and integrating the levy for payment institutions into it. Next year, we will work with CFEB to develop a framework that more closely aligns with their business strategy.

### *The international character of financial services and the desirability of maintaining the competitive position of the UK*

11. Fees policy proposals do not normally have any significant effect on competition and innovation. However, we consider that our proposal to replace the fees for the transaction reporting system with contracts will help to promote competitive pricing for the users of approved reporting mechanisms.

### *Most appropriate method*

12. In carrying out our general duties, we are required to act in a way that we consider most appropriate for the purpose of meeting our objectives.
13. We believe that our fees policy proposals are the most appropriate means of raising the funding required to maintain our statutory objectives because they are:
  - consistent and build on existing fee-raising arrangements, which have operated since N2 (1 December 2001 – when we gained our powers);

- targeted towards the most appropriate firms;
  - influenced by our risk-based approach to achieving our statutory objectives; and
  - compatible with the legal framework provided by both FSMA and our Handbook.
14. We do not consider that the changes we are consulting on will have any significant effect on the other principles.



# List of questions on which we are consulting

## Chapter 2

- Q1: Do you agree with our proposed application fees for authorised electronic money institutions and small electronic money institutions?
- Q2: Do you agree that small electronic money institutions and exempted electronic money issuers with an average outstanding electronic money of less than €5 million should be in a separate fee block, G.11, and pay a flat fee of £1,000?
- Q3: Do you agree that we should use the definition of average outstanding electronic money in 2EMD as the tariff base for periodic fees for the electronic money issuers in fee-block G.10 in 2011/12, using the figure supplied on application for new issuers and the figure for the six months ending 31 December 2010 for firms that are already authorised?
- Q4: Do you think we should retain average outstanding electronic money for the six months ending 31 December before the relevant fee-year as the tariff base for fee-block G.10? Or, do you think we should consider alternative measures as better indicators of impact risk and, if so, what should they be?
- Q5: Do you agree with our proposed tariff-bands for electronic money issuers in G.10?
- Q6: Do you agree with our proposal to offer a discount of 40% on the variable periodic fees charged to inward-passporting EEA-authorised electronic money institutions and credit institutions that issue electronic money in fee-block G.10?

- Q7: Do you agree with our proposals for charging additional fees to authorised electronic money institutions and small electronic money institutions that offer payment services that are not integral to the issuance of electronic money?
- Q8: Do you agree with our proposals for applying the CFEB levy to electronic money issuers?
- Q9: Do you agree with our proposals for a new, separate, industry block for electronic money issuers?
- Q10: Do you agree with our proposal that the tariff-base for electronic money issuers:
- should be based on the average outstanding electronic money (except for small electronic money institutions); and
  - that small electronic money institutions should pay a flat fee?
- Q11: Do you agree with the ombudsman service's proposals that:
- there should be a new, separate, industry block for electronic money issuers participating in the voluntary jurisdiction; and
  - the tariff-base should be based on average outstanding electronic money?

### **Chapter 3**

- Q12: Do you agree with our proposal to amend FEES 4 Annex 3 as proposed in paragraph 3.10?

### **Chapter 4**

- Q13: Do you agree with the funding framework we are proposing for payment institutions contributing towards the CFEB levy?

### **Chapter 5**

- Q14: Do you agree that our proposed addition to FEES 4, Annex 1, Part 2 makes it clear that firms should exclude their own funds when calculating the tariff base under fee-block A.7?



## **Chapter 6**

- Q15: Do you agree with the proposed definition of International Securities Identification Number?
- Q16: Do you agree with the proposed changes to Annex 1 of FEES 5 and consequential changes to other parts of the Fees Manual as set out at Appendix 2?

## **Chapter 7**

- Q17: Do you have any views on the proposals for the future allocation and recovery of the costs of client money and assets regulation?



# Location of fees and levy rules and guidance in the FSA Handbook

1. All rules and guidance on regulatory fees and levies are consolidated in the Fees manual (FEES) in our Handbook. The table below shows the organisation of rules and guidance in FEES:
2. Our powers to make rules for the payment of fees are in FSMA, at paragraph 17 of Part 3 of Schedule 1. Section 99 of FSMA sets out our power to make fee rules for the UK Listing Authority.

**Table A4: Location of fees rules and guidance in the Fees Manual (FEES)**

Chapter	Fees rules and guidance, and fee annexes
<b>FEES 1</b>	<b>Application and Purpose</b>
<b>FEES 2</b>	<b>General Provisions</b>
<b>FEES 3</b>	<b>Application, Notification and Vetting fees</b>
Annex 1R	Authorisation fees payable
Annex 2R	Application and notification fees payable in relation to collective investment schemes
Annex 3R	Application fees payable in connection with Recognised Investment Exchanges and Recognised Clearing Houses
Annex 4R	Application fees in relation to listing rules
Annex 5R	Document vetting and approval fees in relation to listing and prospectus rules
Annex 6R	Fees payable for permission or guidance on its availability in connection with the Basel Capital Accord
Annex 7R	Fees where changes are made to firms' transaction reporting systems and the FSA is asked to check that these systems remain compatible with FSA systems
Annex 8R	Fees payable for authorisation as an authorised payment institution or registration as a small payment institution in accordance with the Payment Services Regulations
Annex 9R	Special Project Fee for restructuring

<b>Chapter</b>	<b>Fees rules and guidance, and fee annexes</b>
<b>FEES 4</b>	<b>Periodic fees</b>
Annex 1R	Activity groups, tariff bases and valuation dates applicable
Annex 2R	Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April 2010 to 31 March 2011
Annex 3R	Transaction reporting fees
Annex 4R	Periodic fees in relation to collective investment schemes payable for the period 1 April 2010 to 31 March 2011
Annex 5R	Periodic fees for designated professional bodies payable in relation to the period 1 April 2010 to 31 March 2011
Annex 6R	Periodic fees for recognised investment exchanges and recognised clearing houses payable in relation to the period 1 April 2010 to 31 March 2011
Annex 7R	Periodic fees in relation to the Listing Rules for the period 1 April 2010 to 31 March 2011
Annex 8R	Periodic fees in relation to the discolour rules and transparency rules for the period 1 April 2010 to 31 March 2011
Annex 9R	Periodic fees in respect of securities derivatives for the period from 1 April 2010 to 31 March 2011
Annex 10R	Periodic fees for MTF operators payable in relation to the period 1 April 2010 to 31 March 2011
Annex 11R	Periodic fees in respect of payment services carried on by fee-paying payment service providers under the Payment Services Regulations in relation to the period 1 April 2010 to 31 March 2011
<b>FEES 5</b>	<b>Financial Ombudsman Service Funding</b>
Annex 1R	Annual Fees Payable in Relation to 2010/11
<b>FEES 6</b>	<b>Financial Services Compensation Scheme Funding</b>
Annex 1R	Management Expenses Levy Limit
<b>FEES 7</b>	<b>Consumer Financial Education Body</b>
Annex 1R	CFEB levies for the period from 1 April 2010 to 31 March 2011

## **Notes:**

Fees for unauthorised mutuals – the ‘registrant-only’ fee-block – are in rules outside the FSA Handbook. They are available at:

[www.fsa.gov.uk/Pages/Doing/small\\_firms/MSR](http://www.fsa.gov.uk/Pages/Doing/small_firms/MSR) (Note: Fees for unauthorised mutuals – the ‘registrant-only’ fee-block – sit outside our Handbook. Details can be accessed on the web at: [www.fsa.gov.uk/Pages/Doing/small\\_firms/MSR](http://www.fsa.gov.uk/Pages/Doing/small_firms/MSR))

Draft rules and guidance  
for consultation response  
by 26 November 2010 –  
Fees (Electronic Money  
Application Fees)  
Instrument 2011

## FEES (ELECTRONIC MONEY APPLICATION FEES) INSTRUMENT 2011

### Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 156 (General supplementary powers);
    - (b) section 157(1) and (4) (Guidance);
    - (c) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority);
  - (2) the following provisions of the Payment Services Regulations 2009 (SI 2009/209):
    - (a) regulation 82 (Reporting requirements);
    - (b) regulation 92 (Costs of supervision); and
    - (c) regulation 93 (Guidance);
  - (3) the following provisions of the Electronic Money Regulations 2010 [\*]
    - (a) regulation 48 (Reporting requirements)
    - (b) regulation 58 (Costs of supervision); and
    - (c) regulation 59 (Guidance).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on [\*] January 2011.

### Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Fees manual (FEES) is amended in accordance with Annex B to this instrument.

### Citation

- F. This instrument may be cited as the Fees (Electronic Money Application Fees) Instrument 2011.

By order of the Board  
[\*] January 2011

## Annex A

### Amendments to the Glossary of definitions

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

Insert the following new definition in the appropriate alphabetical position; the text is not underlined.

- fee-paying electronic money issuer* any of the following when they issue *electronic money*:
- (a) an *authorised electronic money institution*;
  - (b) a *small electronic money institution*;
  - (c) an *EEA authorised electronic money institution*;
  - (d) a *full credit institution*, including a branch of the *full credit institution* within the meaning of article 4(3) of the *BCD* which is situated within the *EEA* and which has its head office in a territory outside the *EEA* in accordance with article 38 of the *BCD*;
  - (e) the Post Office Limited;
  - (f) the Bank of England, when not acting in its capacity as a monetary authority or carrying out functions of a public nature;
  - (g) government departments and local authorities, when carrying out functions of a public nature;
  - (h) a *credit union*;
  - (i) a municipal bank; and
  - (j) the National Savings Bank.

*A full credit institution that is an EEA firm is only a fee-paying electronic money issuer if it is exercising an EEA right in accordance with Part 2 of Schedule 3 to the Act (exercise of passport rights) to issue electronic money in the United Kingdom. An EEA authorised electronic money institution is only a fee-paying electronic money issuer if it is exercising a right under Article 2 of the Directive of 16 September 2009 relating to the taking up, pursuit of and prudential supervision of the business of electronic money institutions (2000/46/EC) to issue electronic money in the United Kingdom.*

Amend the following definition as shown.

*firm*

(1) an *authorised person*, but not a *professional firm* unless it is an *authorised professional firm* (see also *GEN 2.2.18R* for the position of an authorised partnership or unincorporated association which is dissolved).

...

(5) (in *FEES 3* to *FEES 5*) includes a *fee-paying payment service provider* in accordance with *FEES 3.1.1AR*, *FEES 4.1.1AR* and *FEES 5.1.1AR* and in *FEES 3* also includes a *fee-paying electronic money issuer*.



## Annex B

## Amendments to the Fees manual (FEES)

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

- 2.1.5 G Paragraph 17 of Schedule 1 to and section 99 of the *Act*, ~~and~~ regulation 92 of the *Payment Services Regulations* and regulation 57 of the *Electronic Money Regulations* enable the *FSA* to charge fees to cover its costs and expenses in carrying out its functions. The corresponding provisions for the *FSCS* levy, *FOS* levies and case fees and *CFEB levies* are set out in *FEES* 6.1, *FEES* 5.2 and *FEES* 7.1.4G respectively. *Fee-paying payment service providers and fee-paying electronic money issuers* are not required to pay the *FSCS* levy but are liable for *FOS* levies.
- 2.1.5A G Regulation 92 of the *Payment Services Regulations* provides that the functions of the *FSA* under the regulations are treated for the purposes of paragraph 17 of Schedule 1 to the *Act* as functions conferred on the *FSA* under the *Act*. Paragraphs 17(2) and (3) however, have not been included by the *Payment Services Regulations*. These are, respectively, the ~~*FSA*~~ *FSA's* obligation to ensure that the amount of penalties received or expected to be received are not to be taken into account in determining the amount of any fee payable and the provision that allows fees to be raised to repay borrowed monies in respect of expenses incurred, before or after the coming into force of the *Act* or the Bank of England Act 1998.
- 2.1.5B G Regulation 57 of the *Electronic Money Regulations* provides that the functions of the *FSA* under the regulations are treated for the purposes of paragraph 17 of Schedule 1 to the *Act* as functions conferred on the *FSA* under the *Act*. Paragraphs 17(2) and (3) however, have not been included by the *Electronic Money Regulations*. These are, respectively, the *FSA's* obligation to ensure that the amount of penalties received or expected to be received are not to be taken into account in determining the amount of any fee payable and the provision that allows fees to be raised to repay borrowed monies in respect of expenses incurred, before or after the coming into force of the *Act* or the Bank of England Act 1998.
- ...
- 2.1.11 G Whilst paragraph 17(2) of Schedule 1 to the *Act* has not been applied to the fee-raising power of the *FSA* under the *Payment Services Regulations* and the *Electronic Money Regulations*, regulation 92(2) and 57(2) of these regulations respectively requires ~~require~~ the *FSA* to apply amounts paid to it by way of penalties imposed under ~~the~~ these regulations towards expenses incurred in carrying out its functions under the regulations, or for any incidental purpose.
- ...

## Recovery of Fees

- 2.2.3 G Paragraph 17(4) and paragraph 19B of Schedule 1 to and section 99(5) of the *Act* permit the *FSA* to recover fees (including fees relating to *payment services*, *electronic money* and, where relevant, *FOS* levies and *CFEB* levies), and section 213(6) permits the *FSCS* to recover shares of the *FSCS* levy payable, as a debt owed to the *FSA* and *FSCS* respectively, and the *FSA* and the *FSCS*, as relevant, will consider taking action for recovery (including interest) through the civil courts. Also, the *FOS Ltd* (in respect of case fees) may take steps to recover any money owed to it (including interest).
- ...
- 3.1.1 R This chapter applies to every ~~person~~ *person* set out in ~~*FEES* 1.1.2R(1)~~, column 1 of the Table of application, notification and vetting fees in ~~*FEES* 3.2.7R~~.
- 3.1.1A R A reference to "*firm*" in this chapter includes a reference to a *fee-paying payment service provider* and a *fee-paying electronic money issuer* ~~but not one which is a *small-e-money issuer*~~.
- ...
- 3.1.6A G ...
- 3.1.6B G Application fees for authorisation or registration under the *Electronic Money Regulations* are set out in *FEES* 3 Annex 10R. The fee depends on whether the firm is an *authorised electronic money institution* or a *small electronic money institution*.
- ...
- 3.2.5 G (1) The appropriate authorisation or registration fee is an integral part of an application for, or an application for a variation of, a *Part IV permission* or authorisation, registration or variation under the *Payment Services Regulations* or the *Electronic Money Regulations*. Any application received by the *FSA* without the accompanying appropriate fee, in full and without deduction (see *FEES* 3.2.1R), will not be treated as an application made, incomplete or otherwise, in accordance with section 51(3)(a), or section 44, of the *Act* or regulation 5(3) or 12(3) of the *Payment Services Regulations* or regulation 6 or 13 of the *Electronic Money Regulations*. Where this is the case, the *FSA* will contact the applicant to point out that the application cannot be progressed until the appropriate fee has been received. In the event that the appropriate authorisation fee, in full and without deduction, is not forthcoming, the application will be returned to the applicant and no application will have been made.
- ...

## 3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
(zf) An applicant for a <i>ceding insurer's waiver</i> .	...	...
<u>(zg) An applicant for authorisation as an authorised electronic money institution under regulation 6 of the <i>Electronic Money Regulations</i>.</u>	<u>The amount set out in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>
<u>(zh) An applicant for registration as a small electronic money institution under regulation 13 of the <i>Electronic Money Regulations</i>.</u>	<u>The amount set out in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>
<u>(zi) An application by a small electronic money institution for authorisation as an authorised money institution because regulation 17 of the <i>Electronic Money Regulations</i> applies.</u>	<u>The amount set out in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>
<u>(zj) An authorised electronic money institution applying to vary its authorisation under regulation 9 of the <i>Electronic Money Regulations</i>.</u>	<u>The amount set out in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>
<u>(zk) A small electronic money institution applying to vary its registration under regulation 13 of the <i>Electronic Money Regulations</i>.</u>	<u>The amount set out in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>

Fees 3 Authorisation fees payable  
Annex 1

...

## Part 6 – Change of legal status

An application involving only a simple change of legal status for the purposes of *FEES* 3.2.7R(a), *FEES* 3.2.7R(y), ~~and~~ *FEES* 3.2.7R(za), *FEES* 3.2.7R(zg) and *FEES* 3.2.7R(zh) is from an applicant:

(1) which is a new legal entity intending to carry on the business, using the same business plan, of an existing <i>firm</i> with no outstanding regulatory obligations cancelling its <i>Part IV permission</i> , authorisation or registration under the <i>Payment Services Regulations</i> <u>and authorisation or registration under the <i>Electronic Money Regulations</i></u> , and	
(2) which is to:	
	(a) have the same or narrower <i>permission</i> , scope of authorisation or registration under the <i>Payment Services Regulations</i> <u>and <i>Electronic Money Regulations</i></u> and the same <i>branches</i> (if any), as the <i>firm</i> ;
	(b) assume all of the rights and obligations in connection with the <i>regulated activities</i> and <i>payment services</i> carried on by the <i>firm</i> <u>and the issuance of <i>electronic money</i> by the <i>firm</i></u> ;
...	

...

After FEES 3 Annex 9R, insert the following new Annex. The text is not underlined.

**3 Annex 10R Fees payable for authorisation as an authorised electronic money institution or registration as a small electronic money institution or variation of authorisation as an authorised electronic money institution or variation of registration as a small electronic money institution in accordance with the Electronic Money Regulations**

Authorisation, registration and variation fees payable

Application type for authorisation, registration or variation under Part 2 of the <i>Electronic Money Regulations</i>	Amount payable
(1) <i>small electronic money institution</i>	£1,000
(2) <i>authorised electronic money institution</i>	£5,000

...

After FEES TP 5 insert the following new transitional provisions. The text is not underlined.

**TP 6 Transitional arrangements in relation to the introduction of the Electronic Money Regulations**

6.1 Introduction

6.1.1 G *FEES* TP 6 deals with transitional arrangements relating to the introduction of the *Electronic Money Regulations* in 2011.

## 6.2 Application fees

- 6.2.1 G Under regulation 73 of the *Electronic Money Regulations* a person who before 30th April 2011 issued electronic money in accordance with a *Part IV permission* may notify the *FSA* that it wishes to be authorised as an *authorised electronic money institution* or to be registered as a *small electronic money institution*. This covers the category of *firm* called an ELMI. That category is abolished by the *Electronic Money Regulations*.
- 6.2.2 G No fee under *FEES 3* is payable for that notification.
- 6.2.3 G Before it was amended by the *Electronic Money Regulations*, article 9C of the *Regulated Activities Order* allowed a small electronic money issuer to get a certificate from the *FSA* that allowed it to issue electronic money without being authorised. Regulation 75 of the *Electronic Money Regulations* applies to such an issuer. Such an issuer can apply under the *Electronic Money Regulations* to become an *authorised electronic money institution* or to be registered as a *small electronic money institution*. If it does, a fee is payable under *FEES 3* in the same way as it is for any other new application.



Draft rules and guidance  
for consultation response  
by 26 November 2010  
– Fees (Miscellaneous  
Amendments and  
FOS Ltd Rules)  
Instrument 2010

**FEES (MISCELLANEOUS AMENDMENTS AND FINANCIAL OMBUDSMAN  
SERVICE RULES) INSTRUMENT 2010**

**Powers exercised**

A. The Financial Ombudsman Service Limited makes in Annex B to this instrument:

- (1) the rules and guidance relating to the payment of fees under the Compulsory Jurisdiction
- (2) the rules and guidance for licensees relating to payment of fees under the Consumer Credit Jurisdiction; and
- (3) the rules and guidance for VJ participants relating to the payment of fees under the Voluntary Jurisdiction;

in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (a) paragraph 8 (Guidance) of Schedule 17;
- (b) paragraph 15 (Fees) of Schedule 17;
- (c) paragraph 16C (Fees) of Schedule 17; and
- (d) paragraph 18 paragraph 18 (Terms of reference to the scheme) of Schedule 17.

B. The making of these rules, standard terms and guidance by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

C. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under:

- (1) the Act:
  - (a) section 156 (General supplementary powers);
  - (b) section 157(1) and (4) (Guidance);
  - (c) section 234 (Industry funding);
  - (d) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
  - (e) paragraph 12(1) (Funding of the relevant costs by authorised persons or payment service providers) of Part 2 of Schedule 1A (Further provision about the Consumer Financial Education Body);
- (2) the following provisions of the Payment Services Regulations 2009 (SI 2009/209) (“the Regulations”):
  - (a) regulation 82 (Reporting requirements);
  - (b) regulation 92 (Costs of supervision); and
  - (c) regulation 93 (Guidance);



- (3) the following provisions of the Electronic Money Regulations 2010 [\*]:
- (a) regulation 48 (Reporting requirements);
  - (b) regulation 58 (Costs of supervision); and
  - (c) regulation 59 (Guidance).

D. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

### **Commencement**

E. This instrument comes into force on 17 December 2010.

### **Amendments to the Handbook**

F. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
The Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C

### **Citation**

G. This instrument may be cited as the Fees (Miscellaneous Amendments and Financial Ombudsman Service Rules) Instrument 2010.

By order of the Financial Ombudsman Service Limited  
[TBC]

By order of the Board  
[\*] December 2010

## Annex A

### Amendments to the Glossary of definitions

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

*International Securities Identification Number (ISIN)* a 12-character, alphanumeric code which uniquely identifies a *financial instrument* and provides for the uniform identification of *securities* at trading and settlement.

**Annex B**

**Amendments to the Fees manual (FEES)**

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

...

Purpose

- 3.1.3 G The purpose of this chapter is to set out the *FSA* fee paying requirements on the persons set out in *FEES* 1.1.2R(1). ~~The *FSA's* power to charge in respect of *guidance* regarding the Basel Capital Accord is derived from section 157(4)(c) of the *Act*.~~

...

Method of payment

- 3.2.3 R (1) Unless (2) or (3) applies, the sum payable under *FEES* 3.2.1R must be paid by bankers draft, cheque or other payable order.

...

- (3) The sum payable under *FEES* 3.2.1R by a *firm* applying for a variation of its *Part IV permission* (*FEES* 3.2.7R(p)) must be paid by any of the methods described in (1) or by Maestro/~~Switch~~ or credit card (Visa/Mastercard only). Any payment by a permitted credit card must include an additional 2% of the sum paid.

...

- 3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
(q) A super transaction, being one where: (i) the <i>issuer</i> has a market capitalisation in excess of £1.5 billion and it is a new applicant for a <del><i>primary</i></del> <u><i>premium</i></u> <i>listing</i> under the <i>listing rules</i> , or involved in a reverse or hostile takeover or a significant restructuring; or ...	...	...
...		

Method of payment

4.2.4 R (1) Unless (2) applies, a periodic fee must be paid using either direct debit, credit transfer (BACS/CHAPS), cheque, ~~switch~~ Maestro or by credit card (Visa/Mastercard only). Any payment by permitted credit card must include an additional 2% of the sum paid.

...

...

4.2.11 R Table of periodic fees

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
...			
<i>Overseas recognised body</i>	<i>FEES 4 Annex 6R, part 2</i>	...	<i>Recognition order is made. Modified periodic fee: (1) for an overseas investment exchange, <del>£10,000</del> £40,000; (2) for a <u>an</u> overseas clearing house, <del>£35,000</del> £70,000.</i>
...			

...

**4 Annex 1R Activity groups, tariff bases and valuation dates applicable**

Part 1	...
--------	-----

Activity group	Fee payer falls in the activity group if
...	
A.16 Pensions review levy firms	<del>it was liable to pay the Pensions Levy to PIA in 2001/2002.</del> <u>Not applicable.</u>
...	

Part 2	...
--------	-----

Activity group	Tariff base
...	
A.7	...
	<p><b>Notes on FuM</b></p> <p>(a) ...</p> <p>(b) <u>Assets managed by the firm on a discretionary basis exclude the firm's own assets.</u> Assets managed on a non-discretionary basis, being assets that the firm has a contractual duty to keep under continuous review but in respect of which prior specific consent of the client must be obtained for proposed transactions, are NOT included as this activity is covered in those charged to fees in activity groups A.12 and A.13.</p> <p>...</p>
...	
A.16	<del>Percentage share of the amount paid towards PIA's 2001/2002 pensions review levy by fee payers in fee block A.16. Not applicable.</del>
...	

...

**4 Annex 3R Transaction reporting fees**

This table shows the fees payable for firms using the FSA's Transaction Reporting System where firms do not have a written contract with the FSA in relation to their use of the System.

...

**4 Annex 9R Periodic fees in respect of securities derivatives for the period from 1 April 2010 to 31 March 2011**

Part 1

...

Fee amount for firms
...

<p><i>Market operators providing facilities for trading in securities derivatives that do not identify those securities derivatives using an <del>International Securities Identity Number</del> <u>International Securities Identity Number</u></i></p>	<p>...</p>
--	------------

...

5.2.7 G This chapter sets out the framework for the funding arrangements of the *Financial Ombudsman Service*, including, where relevant, the method by which fees will be calculated. Details of the actual fees payable will vary from year to year, depending on the *annual budget* of the *Financial Ombudsman Service*. These details will be set out in ~~an annex~~ annexes to this chapter (~~FEES 5 Annex 1R~~). ~~A new annex~~ New annexes will be prepared and consulted on for each *financial year*.

...

5.3.1 G Each *financial year*, the *FSA* and *FOS Ltd* will consult on the amount of the ~~annual budget~~ annual budget of the *Financial Ombudsman Service* which is to be raised by the *general levy*.

...

5.3.4 G ~~Part 2 of FEES 5 Annex 1R~~ sets out the fee tariffs for each *industry block*.

...

5.3.8 R A *firm's general levy* under the compulsory jurisdiction is calculated as follows:

- (1) identify each of the tariff bases set out in ~~Part 2 of FEES 5 Annex 1R~~ which apply to the *relevant business* of the *firm* for the relevant year;

...

...

5.3.10 R For the purpose of *FEES 5.3*, references to *relevant business* for a *firm* which falls in *industry block 16* or *17* and which so elects under ~~Part 2 of FEES 5 Annex 1R~~, are references to the *firm's* total amount of annual income reported in accordance with *Part 2 of FEES 4*.

...

5.4.1 R (1) A *firm* must provide the *FSA* by the end of February each year (or, if the *firm* has become subject to the *Financial Ombudsman Service* part way through the *financial year*, by the date requested by the *FSA*) with a statement of the total amount of *relevant business* (measured in accordance with the appropriate tariff base(s)) which it conducted, as at or in the year to 31 December of the previous

year as appropriate, in relation to the tariff base for each of the relevant *industry blocks* set out in ~~part 2~~ of FEES 5 Annex 1R.

...

- (4) For the purpose of FEES 5.4.1R, references to *relevant business* for a *firm* which falls in *industry block* 16 or 17 and which so elects under ~~part 2~~ of FEES 5 Annex 1R, are references to the *firm's* total amount of annual income reported in accordance with Part 2 of FEES 4 Annex 1R.

...

## 5.5 Case fees

### Standard case fee

- 5.5.1 R A *firm* or *licensee* must pay to FOS Ltd the standard case fee specified in ~~part 3~~ of FEES 5 Annex 1R 3R in respect of each *chargeable case* relating to that *firm* or *licensee* which is closed by the *Financial Ombudsman Service*, unless a special case fee is payable or has been paid in respect of that case under FEES 5.5.6R to FEES 5.5.12R.

...

- 5.5.4 R Any *firm* falling into either *industry block* 13 or *industry block* 15 in ~~part 2~~ of FEES 5 Annex 1R is not required to pay the standard case fee in respect of *chargeable cases* relating to those *industry blocks*.

...

### Special case fees: complaints from small businesses

- 5.5.6 R A *firm* must pay to FOS Ltd a special case fee, as specified in ~~part 3~~ of FEES 5 Annex 1R 3R in respect of each *chargeable case* relating to that *firm* closed by the *Financial Ombudsman Service* which was referred to the *Financial Ombudsman Service* by *eligible complainants* who fall within *DISP 2.7.3R(2)*, *DISP 2.7.6R(12)(a)* and *DISP 2.7.6R(12)(a)*.

...

- 5.5.7 R A *firm* which ceases to be *authorised* must pay to FOS Ltd a special case fee, as specified in ~~part 3~~ of FEES 5 Annex 1R 3R, in respect of each *chargeable case* relating to that *firm* closed by the *Financial Ombudsman Service* which concerned an act or omission occurring when the *firm* was *authorised* and where the complaint was made after its *authorisation* ceased.

- 5.5.7A R ~~DISP FEES~~ 5.5.7R applies to *persons* which cease to be *licensees* in the same way as it applies to *firms* which cease to be *authorised*.

...

Special case fees: relevant complaints against persons who were subject to a former scheme

- 5.5.8 R An *unauthorised person* who is subject to the *Compulsory Jurisdiction* in relation to a *relevant complaint* must pay to *FOS Ltd* a special case fee as specified in ~~part 3 of FEES 5 Annex 1R~~ 3R in respect of each *chargeable case* relating to that *unauthorised person* closed by the *Financial Ombudsman Service*.

...

- 5.9.2 G *Firms* which cease to be authorised ~~and therefore subject to the *Compulsory Jurisdiction*~~ part way through the year will not receive a refund of their *general levy* except in exceptional circumstances. *Firms* and *payment service providers* will continue to be liable for any case fees relating to *chargeable cases* closed by the *Financial Ombudsman Service* after they cease to be *authorised* , or cease to be *payment service providers*. *Firms* and *payment service providers* will be charged the standard case fee where the complaint was closed by the *Financial Ombudsman Service* before the end of the year in which their *authorisation* ceased or, as the case may be, they ceased to be *payment service providers* . The special case fee will apply to any complaint closed after the end of that year since the *firm* or *payment service provider* will no longer be contributing to the *general levy*.

...

**5 Annex 1 R Annual Fees Payable in Relation to 2010/11 Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2010/11**

Introduction: annual budget

1. The *annual budget* for 2010/11 approved by the *FSA* is £113.7m.

**Part 1: General levy**

2. The total amount expected to be raised through the *general levy* in 2010/11 will be £17.7m (net of £1.8m to be raised from consumer credit firms).

**Part 2: Fee tariffs for general levy**

**Compulsory jurisdiction - general levy**

Industry block	Tariff base	General levy payable by firm
...		



Insert the following new Annexes. The text is not underlined

**5 Annex 2R Annual Levy Payable in Relation to the Voluntary Jurisdiction for 2010/11**

<b>Voluntary jurisdiction – annual levy for VJ participants</b>				
<b>industry block and business activity</b>		<b>tariff basis</b>	<b>tariff rate</b>	<b>minimum levy</b>
1V	Deposit acceptors, <i>mortgage lenders</i> and <i>administrators</i> , including debit/credit/charge card issuers and electronic money institutions	number of relevant accounts, adjusted in respect of <i>e-money accounts</i> on the same basis as for industry block 1 in Part 2 of <i>FEES 5 Annex 1R</i>	£0.0278	£100
2V	<i>VJ participants</i> undertaking insurance activities subject only to prudential regulation	per £1,000 of relevant annual gross premium income	£0.103	£100
3V	<i>VJ participants</i> undertaking insurance activities subject to prudential and conduct of business regulation	Per £1,000 of relevant adjusted annual gross premium income	£0.025	£100
6V	Intermediaries	n/a	n/a	£75
7V	Freight-forwarding companies	n/a	n/a	£75
8V	National Savings & Investments	n/a	n/a	£10,000
9V	Post Office Limited	n/a	n/a	£10,000
10V	Persons not covered by 1V to 9V undertaking activities which would be <i>regulated activities</i> or <i>payment services</i> or <i>consumer credit activities</i> if they were carried on from an establishment in the <i>United Kingdom</i>	n/a	n/a	£75

5 Annex 3R Case Fees Payable for 2010/11

<b>Table of case fees payable</b>		
	Standard case fee	Special case fee
Compulsory jurisdiction	£500	£500
Voluntary jurisdiction	£500	£500
Consumer credit jurisdiction	£500	£500

Notes

1	The definitions of <u>standard case fee</u> <del>standard case fee</del> and <u>special case fee</u> <del>special case fee</del> are in FEES 5.5 (Case fees).
2	<i>Firms, licensees and VJ participants</i> will only be charged for the fourth and subsequent <i>chargeable case</i> in each financial year. The definition of <i>chargeable case</i> is in the Glossary to the <i>Handbook</i> .

...

Annex C

**Amendments to the Dispute Resolution: Complaints sourcebook (DISP)**

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

- 4.2.6 R The following *rules* in *FEES* apply to *VJ participants* as part of the *standard terms*, but substituting '*VJ participant*' for '*firm*':
- ...
- (5) *FEES* 5.3.8R (calculation of general levy) but substituting '~~part 4~~' '*FEES* 5 Annex 2R' for '~~part 2~~ *FEES* 5 Annex 1R';
- (6) *FEES* 5.4.1R (information) but substituting:
- (a) '*FOS Ltd*' for '*the FSA*'; and
- (b) '~~part 4~~ *FEES* 5 Annex 2R for '~~part 2~~ *FEES* 5 Annex 1R';
- (7) *FEES* 5.5.1 R (standard case fee) but substituting '~~part 4~~' for '~~part 3~~';
- ...
- (12) ~~*FEES* 5 Annex 1 R (fees payable)~~ *FEES* 5 Annex 2R and *FEES* 5 Annex 3.

Sch 4 Powers Exercised

...

Sch 4.5	G	The powers to make rules relating to the Ombudsman Scheme are shared between the <i>FSA</i> and the <i>FOS Ltd</i> . <i>FOS Ltd</i> 's rules are subject to <i>FSA</i> consent or approval. The rules made exclusively by <i>FOS Ltd</i> are:
		...
	<i>FEES</i> 5	... <i>FEES</i> 5.9.1 R <u><i>FEES</i> 5 Annex 2R</u> <u><i>FEES</i> 5 Annex 3R</u>
	<del><i>FEES</i> 5</del>	<del><i>FEES</i> 5 Annex 1R parts 3 and 4</del>

...



Draft rules and guidance  
for consultation response  
by 7 January 2011 –  
Fees (Electronic Money  
and Miscellaneous  
Amendments)  
Instrument 2011

**FEES (ELECTRONIC MONEY AND MISCELLANEOUS AMENDMENTS)  
INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Ombudsman Service Limited makes in Annex B to this instrument:
- (1) the rules and guidance relating to the payment of fees under the Compulsory Jurisdiction; and
  - (2) the standard terms and guidance for VJ participants relating to the payment of fees under the Voluntary Jurisdiction;
- in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (a) paragraph 8 (Guidance) of Schedule 17;
  - (b) paragraph 15 (Fees) of Schedule 17;
  - (c) paragraph 16C (Fees) of Schedule 17; and
  - (d) paragraph 18 paragraph 18 (Terms of reference to the scheme) of Schedule 17.
- B. The making of these rules, standard terms and guidance by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.
- C. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the Act:
    - (a) section 156 (General supplementary powers);
    - (b) section 157(1) and (4) (Guidance);
    - (c) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
    - (d) paragraph 12(1) (Funding of the relevant costs by authorised persons or payment service providers) of Part 2 of Schedule 1A (Further provision about the Consumer Financial Education Body).
  - (2) the following provisions of the Payment Services Regulations 2009 (SI 2009/209) (“the Regulations”):
    - (a) regulation 82 (Reporting requirements);
    - (b) regulation 92 (Costs of supervision); and
    - (c) regulation 93 (Guidance);
  - (3) the following provisions of the Electronic Money Regulations 2010 [\*]
    - (a) regulation 48 (Reporting requirements)
    - (b) regulation 58 (Costs of supervision); and

(c) regulation 59 (Guidance).

D. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

E. This instrument comes into force on [\*] May 2011.

**Amendments to the Handbook**

F. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
The Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Dispute Resolution: Complaints manual sourcebook (DISP)	Annex C

**Citation**

G. This instrument may be cited as the Fees (Electronic Money and Miscellaneous Amendments) Instrument 2011.

By order of the Board  
[\*] May 2011

## Annex A

### Amendments to the Glossary of definitions

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

<i>fee-paying electronic money issuer</i>	...  A <i>full credit institution</i> that is an <i>EEA firm</i> is only a <i>fee-paying electronic money issuer</i> if it is exercising an <i>EEA right</i> in accordance with Part 2 of Schedule 3 to the <i>Act</i> (exercise of passport rights) to issue <i>electronic money</i> in the <i>United Kingdom</i> . An <i>EEA authorised electronic money institution</i> is only a <i>fee-paying electronic money issuer</i> if it is exercising a right under Article <del>2</del> of the <del>Directive of 16 September 2009 relating to the taking up, pursuit of and prudential supervision of the business of electronic money institutions (2000/46/EC)</del> <u>3</u> of the <i>Electronic Money Directive</i> to issue <i>electronic money</i> in the <i>United Kingdom</i> .
<i>fee-paying payment service provider</i>	any of the following when they provide <i>payment services</i> :  (a) a <i>payment institution</i> ;  (b) a <i>full credit institution</i> ;  (c) an <del>e-money</del> <u><i>electronic money issuer</i></u> (except where it is an <u><i>electronic money issuer</i></u> whose only <u><i>payment service</i></u> activities are those relating to the issuance of <u><i>electronic money</i></u> by itself);  (d) the Post Office Limited;  (e) the Bank of England, other than when acting in its capacity as a monetary authority or carrying out functions of a public nature; and  (f) government departments and local authorities, other than when carrying out functions of a public nature.  A <del>full credit institution or an e-money issuer</del> that is an <del>EEA firm</del> is only a <i>fee-paying payment service provider</i> if it is exercising an <i>EEA right</i> in accordance with Part 2 of Schedule 3 to the <i>Act</i> (exercise of passport rights) to provide <i>payment services</i> in the <i>United Kingdom</i> . An <i>EEA authorised payment institution</i> or an <i>EEA authorised electronic money institution</i> is only a <i>fee-paying payment service provider</i> if it is exercising a right under Article 25 of the <i>Payment Services Directive</i> or <u>Article 3 of the <i>Electronic Money Directive</i></u> to provide <i>payment services</i> in the <i>United Kingdom</i> .
<i>firm</i>	(1) an <i>authorised person</i> , but not a <i>professional firm</i>



unless it is an *authorised professional firm* (see also *GEN 2.2.18 R* for the position of an authorised partnership or unincorporated association which is dissolved).

...

- (5) (in *FEES 3*, ~~*FEES 4*~~, ~~*FEES 5*~~ and *FEES 7*) includes a *fee-paying payment service provider* and a *fee-paying electronic money issuer* in accordance with *FEES 3.1.1AR*, *FEES 4.1.1AR*, and *FEES 5.1.1AR* and *FEES 7.1.1R* and in ~~*FEES 3*~~ also includes a ~~*fee-paying electronic money issuer*~~.

## Annex B

### Amendments to the Fees manual (FEES)

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

#### Application

1.1.2 R This manual applies in the following way:

...

(2) *FEES* 1, 2 and 4 apply to:

...

(j) every *fee-paying payment service provider*;

(k) every *fee-paying electronic money issuer*.

(3) *FEES* 1, 2 and 5 apply to:

(a) every *firm* and *fee-paying payment service provider* and *fee-paying electronic money issuer* which is subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*; and

...

...

(5) *FEES* 1, 2 and 7 apply to:

...

(d) the *Society*;

(e) every *fee-paying payment service provider* except the Bank of England, government departments and local authorities;

(f) every *fee-paying electronic money issuer* except the Bank of England, government departments, local authorities, municipal banks and the National Savings Bank.

...

...

### 3 Annex 1R Authorisation fees payable

#### Part 1 – Authorisation fees payable

...

#### Moderately Complex Cases

Activity grouping	Description
A.1	<i>E-money issuers only</i>
...	

#### 4.1 Introduction

##### Application

...

4.1.1A R A reference to “*firm*” in this chapter includes a reference to a *fee-paying payment service provider* and a *fee-paying electronic money issuer*.

...

4.1.4 G ...

- (3) The periodic fees for *fee-paying payment service providers* and *fee-paying electronic money issuers* are set out in FEES 4 Annex 11R. This annex sets out the activity groups, tariff base, valuation dates and, where applicable, the flat fees due for these *firms*.

Modifications for persons becoming subject to periodic fees during the course of a financial year

...

4.2.7 R A *firm* (other than an *ICVC* or *UCITS qualifier*) which becomes authorised or registered, or whose *permission* and/or *payment service* activities are extended, during the course of the financial year must pay a fee which is calculated by:

- (1) identifying each of the tariffs set out in Part 1 of FEES 4 Annex 2R and/or FEES 4 Annex 11R as appropriate for the relevant financial year that apply to the *firm* only after the *permission* is received or extended or *payment service* activities are authorised or registered or extended or *electronic money* issuance activities are authorised or

registered, but ignoring:

...

...

4.2.7A G Projected valuations for a *firm's* first year will be collected for the 12 month period beginning with the date a *firm* becomes authorised or registered, or the date its *permission* and/or *payment service* activities are extended. That information will be used to calculate the periodic fee for the remainder of the financial year in which the *firm* was authorised or registered or its *permission* and/or payment service activities were extended (adjusted in accordance with *FEES* 4.2.7R) and to calculate the periodic fee for the following financial year. Projected valuations are not relevant for those fee payers that are only required to pay fixed fees.

4.2.7B R (1) This *rule* deals with the calculation of:

(a) a *firm's* fees for its second financial year. This is the *FSA* financial year following the *FSA* financial year in which it was given *permission* and/or was authorised or registered under the *Payment Services Regulations* or the *Electronic Money Regulations* or had its *permission* and/or *payment services* activities extended ("the relevant permissions"); and

...

...

(5) The rest of this *rule* only applies to a *firm* that becomes authorised or registered, or extends its *permission* and/or *payment services* activities, on or after 1 April 2009.

...

...

4.2.8 R In relation to an *incoming EEA firm* or an *incoming Treaty firm* the modification provisions of *FEES* 4.2.7R apply only in relation to the relevant *regulated activities* of the *firm*, which are *passported activities* or *Treaty* activities and which are carried on in the *United Kingdom*, and which are not provided on a *cross border services* basis. For *payment services* and *electronic money issuance*, the adjustment only applies to the business to which the calculation made in *FEES* 4.3.12AR relates.

...

4.2.11 R Table of periodic fees

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified
-------------	---------------	------------	--

			periodic fee
Any <i>firm</i> (except an <i>ICVC</i> or a <i>UCITS</i> <i>qualifier</i> )	As specified in <i>FEES</i> 4.3.1R	(1) Unless (2) or (3) apply, on or before the relevant dates specified in <i>FEES</i> 4.3.6R. (2) Unless (3) applies, if an event specified in column 4 occurs during the course of a financial year, 30 days after the occurrence of that event, or if later the dates specified in <i>FEES</i> 4.3.6R. (3) Where the <i>permission</i> is for <i>operating a multilateral trading facility</i> , the date specified in <i>FEES</i> 4 Annex 10 (Periodic fees for MTF operators).	<i>Firm</i> receives <i>permission</i> , or becomes authorised or registered under the <i>Payment Services Regulations</i> or the <i>Electronic Money Regulations</i> ; or <i>firm</i> extends <i>permission</i> or its <i>payment service</i> activities
...			

- 4.3.2 G (1) The amount payable by each *firm* will depend upon the category (or categories) of *regulated activities* or *payment services* it is engaged in (fee-blocks) and whether it is issuing *electronic money*, and on the amount of business it conducts in each category (tariff base). The fee-blocks and tariffs are identified in *FEES* 4 Annex 1R (and guidance on calculating certain of the tariffs is at *FEES* 4 Annex 12G), while *FEES* 4 Annex 2R sets out the tariff rates for the relevant financial year. In the case of *firms* that provide *payment services* and/or issue *electronic money*, the relevant fee blocks, tariffs and rates are set out in *FEES* 4 Annex 11R.
- (2) *Incoming EEA firms, incoming Treaty firms, and EEA authorised payment institutions and EEA authorised electronic money institutions* receive a discount to reflect the reduced scope of the *FSA's* responsibilities in respect of them. The level of the discount varies from fee-block to fee-block, according to the division of responsibilities between the *FSA* and *Home state regulators* for *firms* in each fee-block (see *FEES* 4.3.11G, *FEES* 4.3.12R and *FEES* 4.3.12AR).

...

Calculation of periodic fee (excluding fee-paying payment service providers and fee-paying electronic money issuers)

- 4.3.3 R The periodic fee referred to in *FEES* 4.3.1R is (except in relation to the *Society*, ~~and fee-paying payment service providers~~ and fee-paying electronic money issuers) calculated as follows:

...

Calculation of periodic fee for fee-paying payments service providers and fee-paying electronic money issuers

- 4.3.3A R The periodic fee referred to in *FEES* 4.3.1R in relation to *fee-paying payment service providers* and fee-paying electronic money issuers is calculated in accordance with *FEES* 4 Annex 11R.

Modification for firms with new or extended permissions

- 4.3.4 G (1) A *firm* which becomes authorised or registered during the course of a financial year will be required to pay a proportion of the periodic fee which reflects the proportion of the year for which it will have a *permission* or the right to provide particular *payment services* or the right to issue electronic money - see *FEES* 4.2.5G and *FEES* 4.2.6R.

...

...

Time of payment

- 4.3.6 R (1) If the *firm's* periodic fee for the previous financial year was at least £50,000, the *firm* must pay:

...

...

- (3) If a *firm* has applied to cancel its *Part IV permission* in the way set out in *SUP* 6.4.5D (Cancellation of permission), or its status as a *payment institution* under regulation 10 of the *Payment Services Regulations* (Cancellation of authorisation) or as regulation 10 is applied by regulation 14 of the *Payment Services Regulations* (Supplementary provisions), or its status as an electronic money issuer under regulation 11 of the *Electronic Money Regulations* (Cancellation of authorisation) or as regulation 11 is applied by regulation 16 of the *Electronic Money Regulations* (Supplementary provisions), then (1) and (2) do not apply but it must pay the total amount due when the application is made.

...

- (4A) If the *FSA* has cancelled a *firm's* authorisation or registration under regulation 10 of the *Payment Services Regulations* or regulation 11 of the *Electronic Money Regulations* or its registration under regulation 10 as applied by regulation 14 of the *Payment Services Regulations* or its registration under regulation 11 as applied by regulation 16 of the *Electronic Money Regulations*, then (1) and (2) do not apply but the *firm* must pay the total amount due immediately before the cancellation becomes effective.

...

...

Incoming EEA firms, incoming Treaty firms, ~~and~~ EEA authorised payment institutions and EEA authorised electronic money institutions.

- 4.3.11 G The *FSA* recognises that its responsibilities in respect of an *incoming EEA firm*, an *incoming Treaty firm*, ~~or~~ an *EEA authorised payment institution* or an *EEA authorised electronic money institution* are reduced compared with a *firm* which is incorporated in the *United Kingdom*. Accordingly the periodic fees which would otherwise be applicable to *incoming EEA firms*, *incoming Treaty firms*, ~~and~~ *EEA authorised payment institutions* and *EEA authorised electronic money institutions* are reduced.

...

- 4.3.12A R For:

- (a) a full credit institution ~~or an e-money issuer~~ which is a *fee-paying payment service provider* and an *EEA firm*; or ~~for an *EEA authorised payment institution*,~~
- (b) a full credit institution which is a fee-paying electronic money issuer and an *EEA firm*; or
- (c) an *EEA authorised payment institution*; or
- (d) an *EEA authorised electronic money institution*;

the calculation required by *FEES* 4.3.3AR is modified as follows:

- (1) the tariffs set out in Part 5 of *FEES* 4 Annex 11R are only applied to the *payment services* or *electronic money issuance* of the *firm* ~~which~~ are carried on from an establishment in the *United Kingdom*, including *payment services* or *electronic money issuance* ~~provided~~ carried on through any of its *agents* established in the *United Kingdom*; and

...

Firms Applying to Cancel or Vary Permission Before Start of Period

- 4.3.13 R (1) If:
- (a) a *firm* makes an application to vary its *permission* (by reducing its scope), or cancel it, in the way set out in *SUP 6.3.15D(3)* (Variation of permission) and *SUP 6.4.5D* (Cancellation of permission), or applies to vary (by reducing its scope) or cancel its authorisation or registration (regulation 8 and 10(1) of the *Payment Services Regulations*) including as applied by regulation 14 of the *Payment Services Regulations* or applies to cancel its authorisation or registration (regulation 9 and 11(1) of the *Electronic Money Regulations*) including as applied by regulation 16 of the *Electronic Money Regulations*; an *issuer* makes an application for de-listing; or a *sponsor* notifies the *FSA* of its intention to be removed from the list of approved *sponsors*; and

...

*FEES 4.2.1R* applies to the *firm* as if the relevant variation or cancellation of the *firm's permission* or authorisation or registration under the *Payment Services Regulations* or the *Electronic Money Regulations*, de-listing or removal from the list of approved *sponsors*, took effect immediately before the start of the period to which the fee relates.

...

- 4.3.14 G Where a *firm* has applied to cancel its *Part IV permission*, or its authorisation or registration under the *Payment Services Regulations* or the *Electronic Money Regulations*, or the *FSA* has exercised its *own-initiative powers* to cancel a *firm's Part IV permission* or the *FSA* has exercised its powers under regulation 10 (Cancellation of authorisation), including as applied by regulation 14 (Supplementary provisions) of the *Payment Services Regulations* to cancel a *firm's* authorisation or registration under the *Payment Services Regulations* or the *FSA* has exercised its powers under regulation 11 (Cancellation of authorisation), including as applied by regulation 16 (Supplementary provisions) of the *Electronic Money Regulations*, the due dates for payment of periodic fees are modified by *FEES 4.3.6R(3)*, *FEES 4.3.6R(4)* and *FEES 4.3.6R(4A)* respectively.

...

Information relating to payment services and the issuance of electronic money

- 4.4.7 D ~~An authorised payment institution, the Post Office Limited, government departments and local authorities or an EEA authorised payment institution~~ A *fee-paying electronic money issuer* and a *fee-paying payment service provider* must notify to the *FSA* the value (as at the valuation date specified in Part 4 of *FEES 4 Annex 11R*) of each element of business on which the



periodic fee (other than a flat fee) payable by the *firm* under *FEES 4 Annex 11R* is to be calculated, including any *payment services* or *electronic money issuance* carried on by its *agents* from an establishment in the *United Kingdom*.

- 4.4.8 D ~~An authorised payment institution, the Post Office Limited, government departments and local authorities or an EEA authorised payment institution~~ A firm must send to the *FSA* in writing the information required under *FEES 4.4.7D* as soon as reasonably practicable, and in any event within two *months*, after the date specified as the valuation date in Part 4 of *FEES 4 Annex 11R*.
- 4.4.9 D To the extent that a firm ~~an authorised payment institution or an EEA authorised payment institution~~ has provided the information required by *FEES 4.4.7D* to the *FSA* as part of its compliance with another provision of the *Handbook*, it is deemed to have complied with the provisions of ~~this section~~ that direction.

...

#### 4 Annex 1R Activity groups, tariff bases and valuation dates applicable

Part 1	...
--------	-----

Activity group	Fee payer falls in the activity group if
A.1 Deposit acceptors	its permission includes <i>accepting deposits</i> ; <u>or operating a dormant account fund</u> <del>or issuing e-money</del> ; BUT DOES NOT include either of the following:
	...
...	

Part 2	...
--------	-----

Activity group	Tariff base
A.1	... <del>For e-money issuers: Outstanding balance of e-money liabilities</del> ...

...

Part 3	This table indicates the valuation date for each fee-block. A <i>firm</i> can calculate its tariff data by applying the tariff bases set out in Part 2 with reference to the valuation dates shown in this table.
--------	---

Activity group	Valuation date
...	
Where a <i>firm's</i> tariff data is in a currency other than sterling, it should be converted into sterling at the exchange rate prevailing on the relevant valuation date.	
A.1	<p>For <i>banks</i>:</p> <p>...</p> <p><del>For <i>e-money issuer</i>:</del></p> <p><del>MELs, valued at the end of the financial year ended in the calendar year ending 31 December.</del></p> <p>...</p>

**4 Annex 2R      Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April 2010 to 31 March 2011**

Part 1

This table shows the tariff rates applicable to each fee block

(1)	...
...	
Note 1	<p>In the case of activity group A.1 there are two tariff rates. The rate in column 1 is the general periodic fee. The rate in column 2 is the reclaim funds set-up fee and is payable by all <i>firms</i> except <i>credit unions</i> and <del><i>e-money issuers</i></del>. The total periodic fee for the A1 fee-block is determined by adding the amounts obtained under both columns.</p> <p>...</p>
...	

...

**4 Annex 11R      Periodic fees in respect of payment services carried on by *fee-paying payment service providers* under the *Payment Services Regulations* and**

**electronic money issuance by fee-paying electronic money issuers under the Electronic Money Regulations in relation to the period 1 April 2010 to 31 March 2011**

Part 1 – Method for calculating the fee for fee-paying payment service providers	
(1)	The periodic fee for <i>fee-paying payment service providers</i> is calculated by <u>identifying the relevant activity group under Part 2 and then adding the minimum fee to an additional fee calculated by multiplying the tariff base identified in Part 3 of FEES 4 Annex 11R by the appropriate rates applying to each tranche of the tariff base as indicated in the table at Part 5. For <i>small payment institutions</i> and <i>small e-money issuers</i> <u>electronic money institutions</u> the tariff rates are not relevant and a flat fee is payable.</u>
	...

Part 1A – Method for calculating the fee for fee-paying electronic money issuers	
(1)	<u>The periodic fee for <i>fee-paying electronic money issuers</i> is calculated by identifying the relevant activity group under Part 2A and then multiplying the tariff base identified in Part 3 of FEES 4 Annex 11R by the appropriate rates applying to each tranche of the tariff base as indicated in the table at Part 5. For <i>small electronic money institutions</i>, the tariff rates are not relevant and a flat fee is payable.</u>
(2)	<u>A <i>fee-paying electronic money issuer</i> may apply the relevant tariff bases and rates to non-UK business, as well as to its UK business, if:</u>
(a)	<u>it has reasonable grounds for believing that the costs of identifying the <i>firm's UK business</i> separately from its non-UK business in the way described in Part 3 of FEES 4 Annex 11R is disproportionate to the difference in fees payable; and</u>
(b)	<u>it notifies the FSA in writing at the same time as it provides the information concerned under FEES 4.4 (Information on which fees are calculated), or, if earlier, at the time it pays the fees concerned.</u>
(3)	<u>For a <i>fee-paying electronic money issuer</i> which is required to comply with FEES 4.4 (Information on which fees are calculated) and has not done so for this period:</u>
(a)	<u>the fee is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10;</u>
(b)	<u>an additional administrative fee of £250 is payable; and</u>
(c)	<u>the minimum total fee (including the administrative fee in (b)) is £650.</u>

Part 1B – Method for calculating the periodic fee where the firm is both a fee-paying payment service provider and a fee-paying electronic money issuer
---

Add the fee calculated under Part 1 to the fee calculated under Part 1A.

Part 2 – Activity groups relevant to fee-paying payment service providers

...

Activity group	Fee payer falls into this activity group if:
G.2 Certain deposit acceptors <del>and e-money issuers</del>	it is a <i>fee-paying payment service provider</i> not falling within any of the other fee-blocks in this table
G.3 Large payment institutions	it is a <u><i>fee-paying payment service provider that is an authorised payment institution an EEA authorised payment institution, or the Post Office Limited or a fee-paying electronic money issuer (except if it is a small electronic money institution)</i></u>
G.4 Small payment institutions	it is a <u><i>fee-paying payment service provider that is a small payment institution or a small e-money issuer electronic money institution</i></u>
...	

Part 2A – Activity groups relevant to fee-paying electronic money issuers

This table shows how the *electronic money* issuance by *fee-paying electronic money issuers* is linked to activity groups ('fee-blocks'). A *fee-paying electronic money issuer* can use the table to identify which fee-blocks it falls into based on its authorisation or registration.

Activity group	Fee payer falls into this activity group if:
G.10 <u><i>Large electronic money institutions</i></u>	<u><i>it is a fee-paying electronic money issuer (except if it is a small electronic money institution)</i></u>
G.11 <u><i>Small electronic money institutions</i></u>	<u><i>it is a small electronic money institution</i></u>

Part 3

This table indicates the tariff base for each fee-block. The tariff base is the means by which the FSA measures the 'amount of business' conducted by *fee-paying payment service providers* and *fee-paying electronic money issuers*.

Activity Group	Tariff base
...	
<u>G.10</u>	<u>AVERAGE OUTSTANDING ELECTRONIC MONEY AS DEFINED UNDER REGULATION 2(1) OF THE ELECTRONIC MONEY REGULATIONS</u>  <u>This is the average total amount of financial liabilities related to <i>electronic money</i> in issue at the end of each calendar day over the preceding six calendar months (which is the period ending on the date set out under Part 4), calculated on the first calendar day of each calendar month and applied for that calendar month (£million).</u>
<u>G.11</u>	<u>Not applicable.</u>

Part 4 – Valuation period

This table indicates the valuation date for each fee-block. A *fee-paying payment service provider* and a *fee-paying electronic money issuer* can calculate its tariff data by applying the tariff bases set out in Part 2 3 with reference to the valuation dates shown in this table.

Activity group	Valuation date
...	
Where a <i>fee-paying payment service provider's</i> the tariff data of a <i>fee-paying payment service provider</i> or a <i>fee-paying electronic money issuer</i> is in a currency other than sterling, it must be converted into sterling at the exchange rate prevailing on the relevant valuation date.	
G.2	For <del>banks, e-money issuers</del> and <i>building societies</i> as in FEES 4 Annex 1R Part 3.
...	
<u>G.10</u>	<u>31 December.</u>
<u>G.11</u>	<u>Not relevant.</u>

Part 5 – Tariff rates

Activity group	Fee payable in relation to 2010/11	
...		
<u>G.10</u>	<u>£m of average outstanding electronic money</u>	<u>Fee (£m or part £m of average outstanding</u>

		electronic money)
	Up to 5m	1,500
	>5m	[*]
G.11	[£1,000]	

Part 6 – Permitted deductions for financial penalties pursuant to the *Payment Services Regulations* and the *Electronic Money Regulations*

*Fee-paying payment service providers* may make deductions as provided in this Part.

Activity group	Nature of deduction	Amount of deduction
...		
G.10	Financial penalties received	0.0%
G.11	Financial penalties received	0.0%

Part 7 – This table shows the modifications to fee tariffs that apply to *EEA authorised payment institutions*, *EEA authorised electronic money institutions*, and *full credit institutions* and ~~*e-money issuers*~~ that are *EEA firms*.

Activity group	Percentage deducted from the tariff payable under Part 5 applicable to the firm	Minimum amount payable
...		
G.10	40%	

...

5.1.1A R A reference to "*firm*" in this chapter includes a reference to a *fee-paying payment service provider* and *fee-paying electronic money issuer* except in *FEES* 5.5 and where "*firm*" is used elsewhere in this chapter in connection with the obligation to pay case fees.

...

5.4.1A D The information requirement set out under *FEES* 5.4.1R(1) applies to a *fee-paying payment service provider* and a *fee-paying electronic money issuer*.

...

5.5.1A R *FEES 5.5.1R applies to payment service providers and electronic money issuers in the same way as it applies to firms.*

...

5.5.6A R *FEES 5.5.6R applies to payment service providers and electronic money issuers in the same way as it applies to firms.*

Special case fees: firms which cease to be authorised, persons which cease to be payment services providers, persons which cease to be electronic money issuers and persons which cease to be licensees

...

5.5.7B R *FEES 5.5.7R applies to persons which cease to be payment service providers or electronic money issuers in the same way as it applies to firms which cease to be authorised.*

...

5.5.15 R Notwithstanding the above, a firm, payment service provider or electronic money issuer or licensee will only be liable for, and FOS will only invoice for, the standard case fee or, as the case may be, the special case fee, in respect of the fourth and subsequent chargeable cases in any financial year.

...

5.7.2A R *FEES 5.7.2R applies to payment service providers and electronic money issuer in the same way it applies to firms.*

...

5.8.2 R (1) This rule deals with the calculation of:

(a) a firm's general levy in the 12 months ending on the 31 March in which it obtains permission, or was authorised under the *Payment Services Regulations* or the *Electronic Money Regulations* or had its permission and/or payment services activities extended ("relevant permissions") and the following 12 months ending on the 31 March; and

...

...

...

5.9.1A R *FEES 5.9.1R applies to persons ceasing to be licensees or payment service providers or electronic money issuers part way through a financial year in the same way as it applies to firms which cease to be authorised.*

5.9.2 G *Firms* which cease to be *authorised* part way through the year will not receive a refund of their *general levy*. *Firms* and *payment service providers* and *electronic money issuers* will continue to be liable for any case fees relating to *chargeable cases* closed by the *Financial Ombudsman Service* after they cease to be *authorised*, or cease to be *payment service providers* or *electronic money issuers*. *Firms* and *payment service providers* and *electronic money issuers* will be charged the standard case fee where the complaint was closed by the *Financial Ombudsman Service* before the end of the year in which their *authorisation* ceased or, as the case may be, they ceased to be *payment service providers* or they ceased to be *electronic money issuers*. The special case fee will apply to any complaint closed after the end of that year since the *firm* or *payment service provider* or *electronic money issuer* will no longer be contributing to the *general levy*.

**5 Annex 1R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2010/11**

**Compulsory jurisdiction - general levy**

Industry block	Tariff base	General levy payable by firm
1-Deposit acceptors, <i>home finance providers</i> , <i>home finance administrators</i> (excluding <i>firms</i> in block 14) and <i>dormant account fund operators</i>	... For an <i>e-money firm</i> , the tariff base includes the number of <i>e-money</i> accounts multiplied by 0.15. ....	...
...		
11 – <i>fee-paying payment service providers</i> (but excluding <i>firms</i> in any other Industry block <u>except Industry block 18</u> )	For <i>authorised payment institutions</i> , <i>electronic money issuers</i> (except for <i>small electronic money institutions</i> ), the Post Office Limited, the Bank of England, government departments and local authorities and <i>EEA authorised payment institutions</i> relevant income as described in FEES 4 Annex 11R Part 3	£0.015 per £1,000 of relevant income subject to a minimum levy of £75



	For <i>small payment institutions</i> and <i>small electronic money institutions</i> <i>small e-money issuers</i> a flat fee	Levy of £75
	For <i>small electronic money institutions</i> a flat fee	<u>To follow</u>
...		
<u>18 – fee-paying electronic money issuers</u>	For <i>authorised electronic money institutions</i> , the Post Office Limited, the Bank of England, government departments and local authorities and <i>EEA authorised electronic money institutions</i> average outstanding <i>electronic money</i> as described in <i>FEES 4 Annex 11R Part 3</i>	<u>To follow</u>
	For <i>small electronic money institutions</i> a flat fee	<u>To follow</u>

Notes

...	
5	The <i>industry blocks</i> in the table are based on the equivalent activity groups set out in Part 1 of <i>FEES 4 Annex 1R</i> and Part 2 and Part 2A of <i>FEES 4 Annex 11R</i> .
6	Where the tariff base in the table is defined in similar terms as that for the equivalent activity group in Part 2 of <i>FEES 4 Annex 1R</i> or Part 3 of <i>FEES 4 Annex 11R</i> , it must be calculated in the same way as that tariff base - taking into account only the <i>firm's relevant business</i> .
7	<del>(1) An <i>e-money</i> account is, subject to (2), <i>e-money</i> that has been issued by an <i>e-money firm</i> issuer and which can reasonably be regarded as being held by the owner of the as a single balance and under the same arrangements. (2) An account that would be an <i>electronic money</i> account under (1) will not be one where, as at 31 December, it carries a nil balance and/or has been inactive for a period of 12 months or more. [deleted]</del>

...	
-----	--

...

**5 Annex 2R Annual Levy Payable in Relation to the Voluntary Jurisdiction for 2010/11**

<b>Voluntary jurisdiction – annual levy for VJ participants</b>				
<b>industry block and business activity</b>		<b>tariff basis</b>	<b>tariff rate</b>	<b>minimum levy</b>
1V	Deposit acceptors, <i>mortgage lenders</i> and <i>administrators</i> , including debit/credit/charge card issuers and <del>electronic money institutions</del>	number of relevant accounts, <del>adjusted in respect of <i>e-money accounts</i></del> on the same basis as for industry block 1 in Part 2 of <i>FEES 5 Annex 1R</i>	£0.0278	£100
...				
10V	Persons not covered by 1V to 9V undertaking activities which (i) are <u>regulated activities</u> or would be <u>regulated activities</u> or <del>payment services</del> or (ii) would be <u>consumer credit activities</u> if they were carried on from an establishment in the <i>United Kingdom</i>	...		
11V	<u>Not used</u>			
12V	<u>Payment service providers, not covered by 1V to 10V. This does not include an <i>electronic money issuer</i> whose only <i>payment service</i> activities are those relating to the issuance of <i>electronic money</i> by itself.</u>	n/a	n/a	£75
13V	<u>An <i>electronic money issuer</i> except a <i>small electronic money institution</i></u>	<u>Average outstanding electronic money as described in <i>FEES 4 Annex 11 R Part 3</i></u>	<u>[To follow]</u>	<u>[To follow]</u>

	<u>A small electronic money institution</u>	n/a	n/a	[To follow]
--	---	-----	-----	-------------

...

- 7.1.4 G Paragraph 12(1) of Part 2 of Schedule 1A to the *Act* enables the *FSA* to make rules requiring ~~any certain authorised persons or payment service providers or electronic money issuers or class of authorised persons or class of payment service providers~~ to pay to the *FSA* specified amounts or amounts calculated in a specified way in order to meet a proportion of:

...

...

- 7.1.10 G This chapter sets out the method by which the *CFEB* levy will be calculated. Details of the actual levy payable will vary from year to year, depending on the *CFEB's* annual budget. These details are set out in *FEES* 7 Annex 1R. New details will be prepared and consulted on for each financial year.

Exemption

- 7.1.11 G A firm is not liable to pay a *CFEB* levy in relation to payment services it provides or issuing electronic money if it is the Bank of England, a government department, a local authority, a municipal bank or the National Savings Bank.

...

- 7.2.3 R The amount payable by a *firm* with respect to a particular activity group is calculated as follows:
- (1) calculate the size of the *firm's* tariff base for that activity group using the tariff base calculations in Part 2 of *FEES* 4 Annex 1R and Part 3 of *FEES* 4 Annex 11R and the valuation date requirements in Part 3 of *FEES* 4 Annex 1R and Part 4 of *FEES* 4 Annex 11R;

...

- 7.2.4 R For the purposes of *FEES* 7.2.3R:
- (1) a *firm* may apply the relevant tariff bases and rates to its non-UK business, as well as to its UK business, if:
- (a) it has reasonable grounds for believing that the costs of identifying the *firm's* UK business separately from its non-UK business in the way described in Part 2 of *FEES* 4 Annex 1R and Part 1 of *FEES* 4 Annex 11R are disproportionate to the difference in fees payable; and

...

...

7.2.5 R The modifications in Part 3 of *FEES 4 Annex 2R* and Part 7 of *FEES 4 Annex 11R* apply.

...

7.2.9A D *FEES 4.4.7D* to *FEES 4.4.9D* (Information relating to *payment services* and the issuance of *electronic money*) also apply to *FEES 7*.

7.2.10 G References in a *FEES 4 rule* incorporated into *FEES 7* by cross-reference to a periodic fee should be read as being to the *CFEB levy*. References in a *FEES 4 rule* incorporated into *FEES 7* to ~~*fee-paying payment service providers, market operators, service companies, MTF operators, investment exchanges, clearing houses, designated professional bodies*~~ or Solvency 2 Implementation fees, Solvency 2 Implementation Flat fees, Solvency 2 Special Project fees and Solvency 2 Special Project Flat fees should be disregarded.

...

7.2.12 R Table of *FEES 4* rules that correspond to *FEES 7* rules

FEES 4 rules	Corresponding FEES 7 rules
...	
<i>FEES 4.3.3 R</i>	<i>FEES 7.2.2R</i>
<u><i>FEES 4.3.3AR</i></u>	<u><i>FEES 7.2.2R</i></u>
<i>FEES 4.3.12R</i>	<i>FEES 7.2.5R</i>
<u><i>FEES 4.3.12AR</i></u>	<u><i>FEES 7.2.5R</i></u>
Part 1 of <i>FEES 4 Annex 2R</i>	Part 1 of <i>FEES 7 Annex 1R</i>
<u>Part 2 of <i>FEES 4 Annex 11R</i></u>	<u>Part 1 of <i>FEES 7 Annex 1R</i></u>
<u>Part 5 of <i>FEES 4 Annex 11R</i></u>	<u>Part 1 of <i>FEES 7 Annex 1R</i></u>

**7 Annex 1R CFEB levies for the period from 1 April 2010 to 31 March 2011**

Part 1

This table shows the *CFEB levies* applicable to each activity group (fee-block)

Activity Group	<i>CFEB levy payable</i>	
...	...	...
<u>G.3</u>	<u>Minimum fee (£)</u>	<u>10</u>
	<u>£ thousands or part £ thousand of Relevant Income</u>	<u>Fee (£/£thousand or part £ thousand of Relevant Income)</u>
	<u>&gt; 0.1</u>	<u>[To follow]</u>
	<u>&gt; 0.25</u>	<u>[To follow]</u>
	<u>&gt; 1.0</u>	<u>[To follow]</u>
	<u>&gt; 10.0</u>	<u>[To follow]</u>
	<u>&gt; 50.0</u>	<u>[To follow]</u>
	<u>&gt; 500.0</u>	<u>[To follow]</u>
<u>G.4</u>	<u>10</u>	
<u>G.10</u>	<u>£m or part £m of average outstanding electronic money</u>	<u>Fee (£m or part £m of average outstanding electronic money)</u>
	<u>Up to 5m</u>	<u>10</u>
	<u>&gt;5m</u>	<u>[To follow]</u>
<u>G.11</u>	<u>10</u>	
<u>Notes</u>		
(1) <u>The definitions of fee-blocks G.2, G3, G4, G5, G10 and G11 under Part 2 and Part 2A of FEES 4 Annex 11R are amended for the purposes of FEES 7 because the Bank of England, government departments, local authorities, municipal banks and the National Savings Bank are not liable to pay a CFEB Levy.</u>		
(2) <u>The definitions of those fee-blocks are further amended to exclude EEA firms and those firms which hold a Part IV permission.</u>		

Part 2	
(1)	...

(2)	...
(3)	A <i>firm</i> is referred to in this paragraph if it falls within the following activity groups: A.1; A.2; A.3 (excluding <i>UK ISPVs</i> ); A.4; A.5; A.7; A.9; A.10; A.12; A.13; A.14; A.18; <del>and</del> A.19; <u>and G.3.</u>

...

**TP 6 Transitional arrangements in relation to the introduction of the Electronic Money Regulations**

...

6.2.3 G ...

6.3 Periodic fees

6.3.1 G A person subject to the transitional arrangements in regulation 73 of the Electronic Money Regulations will be deemed to be an authorised electronic money institution during the transitional period applicable to it. It will also retain its Part IV permission in relation to electronic money.

6.3.2 G A person subject to those transitional arrangements will be liable for the periodic fees payable by an authorised electronic money institution.

- 6.3.3 R
- (1) This rule deals with periodic fees payable under FEES 4.3 by a person subject to the transitional regime in regulation 73 of the Electronic Money Regulations.
  - (2) The fees are calculated as if the person had been an authorised electronic money institution from the beginning of the FSA's financial year 2011/12.
  - (3) The fees for the FSA's financial year 2011/12 are based on information supplied by the person before the periodic fee becomes payable.
  - (4) If the person has notified the FSA that it wishes to be registered as a small electronic money institution and it is registered as a small electronic money institution under regulation 73 during a financial year of the FSA then, for the purpose of the periodic fees for that financial year, it is treated as remaining as an authorised electronic money institution. Therefore no periodic fee is payable for that financial year in its capacity as a small electronic money institution.

- 6.3.4     G     If the transitional period under the *Electronic Money Regulations* comes to an end during a financial year of the *FSA* without the *person* being included by the *FSA* in the register as an *authorised electronic money institution* or as a *small electronic money institution* the ending of its transitional status as an *authorised electronic money institution* is treated in the same way as any other *firm* ceasing to be an *authorised electronic money institution*.
- 6.3.5     R     (1)     This rule deals with periodic fees payable under *FEES* 4.3 by a *person* subject to the transitional regime in regulation 75 of the *Electronic Money Regulations*.
- (2)     Such an issuer is treated as a *small electronic money institution*. However the periodic fee is the same as the periodic fee for fee block G4 not fee block G11.
- (3)     If the *person* has notified the *FSA* that it wishes to be registered as a *small electronic money institution* and it is registered as a *small electronic money institution* during a financial year of the *FSA* and while the transitional period under regulation 75 is still current then, for the purpose of the periodic fees for that financial year, it is treated as remaining as a *small electronic money institution*.
- (4)     If the *person* has notified the *FSA* that it wishes to be authorised as an *authorised electronic money institution* and it is authorised as one during a financial year of the *FSA* while the transitional period under regulation 75 is still current then, for the purpose of the periodic fees for that financial year:
- (a)     it is treated in the same way as a newly authorised *authorised electronic money institution*; but
- (b)     any periodic fee paid or payable for that financial year under (2) is taken into account so that no additional periodic fee is paid under (2).
- 6.3.6     G     The transitional arrangements in regulation 74 of the *Electronic Money Regulations* deal with a *person* other than a *credit institution* that issued electronic money in the *United Kingdom* under an *EEA* passport. It may continue until 30th October 2011 to carry on that activity.
- 6.3.7     R     (1)     This rule deals with periodic fees payable under *FEES* 4.3 by a *person* subject to the transitional regime in regulation 74 of the *Electronic Money Regulations*.
- (2)     During the transitional period under the *Electronic Money Regulations* the *person* is treated as an *EEA authorised electronic money institution*. It is treated as having held this status from the beginning of the *FSA*'s financial year 2011/12.

(3) The fees for the financial year 2011/12 are based on information supplied by the *person* before the periodic fee becomes payable.

6.3.8     G     If the *person* becomes an *EEA authorised electronic money institution* during the transitional period under the *Electronic Money Regulations* it is treated as remaining as an *EEA authorised electronic money institution* during the *FSA's* financial year 2011/12. Therefore no additional periodic fee is payable.

6.3.9     G     If the transitional status of a *person* under the *Electronic Money Regulations* comes to an end before it gets its final status as an *electronic money issuer* under those regulations it is treated in the same way as a *firm* that ceases to be a *fee paying electronic money institution* and then later becomes one again.

6.4        FOS general levy

6.4.1     R     *FEES* TP 6.3 applies to the general levy described in *FEES* 5.3 in the same way as it does to periodic fees under *FEES* 4.3.

6.5        CFEB levy

6.5.1     R     *FEES* TP 6.3 applies to the *CFEB* levy in the same way as it does to periodic fees under *FEES* 4.3.



Annex C

**Amendments to the Dispute Resolution: Complaints sourcebook (DISP)**

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

**Sch 4 Powers Exercised**

Sch 4.5

G

The powers to make rules relating to the Ombudsman Scheme are shared between the *FSA* and the *FOS Ltd*. *FOS Ltd's* rules are subject to *FSA* consent or approval. The rules made exclusively by *FOS Ltd* are:

...	
<i>FEES 5</i>	...
	<i>FEES 5.7.2R</i>
	<u><i>FEES 5.7.2AR</i></u>
	...
...	



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