

Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision – feedback to CP17/35

Policy Statement

PS18/9

April 2018



This relates to

Consultation Paper CP17/35
which is available on our website at
www.fca.org.uk/publications.

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abbreviations

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1 Overview

Introduction

- 1.1** In this policy statement (PS), we set out our final requirements and guidance on recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) through fees. We also provide feedback on the responses we received on consultation paper CP17/35, which we published in October 2017.¹ OPBAS is a new regulator set up by the government within the FCA to strengthen the UK's anti-money laundering (AML) supervisory regime and ensure that professional body AML supervisors (PBSs) provide consistently high standards of AML supervision.

Who does this affect?

- 1.2** This PS applies to the PBSs listed in Schedule 1 to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs) and bodies who apply to be listed. There are currently 22 PBSs listed at Schedule 1 to the MLRs. In addition, this PS relates to 3 bodies² which are not explicitly listed in the Schedule but which conduct supervisory activities that bring them within scope of OPBAS.
- 1.3** It will also be of interest, for information only, to firms registered under the MLRs and not authorised by the FCA for any other activities, since we have taken the opportunity to set out in the FEES manual the charges payable by them.
- 1.4** This PS does not contain material directly relevant to retail financial services consumers.

Context

- 1.5** In March 2017 the government announced its intention to create OPBAS within the FCA. It became operational in January 2018 and has published a sourcebook of guidance on how PBSs can meet their obligations in relation to AML supervision.³
- 1.6** The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (the OPBAS Regulations) give the FCA the power to recover the costs of OPBAS's supervisory activities from the PBSs. The OPBAS Regulations also give the FCA the power to charge applicants who apply to be listed in Schedule 1 to the MLRs. Since we are funded entirely by the fees and levies recovered from the bodies we regulate and do not receive any funding from other

1 *Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision: fees proposals* (CP17/35, October 2017)

2 The Solicitors Regulation Authority, CILEx Regulation, and the Bar Standards Board

3 *Finalised guidance: Sourcebook for professional body anti-money laundering supervisors* (FG18/1, January 2018)



sources, our costs in setting up and operating OPBAS have to be recovered from the PBSs that OPBAS supervises. We consulted through CP17/35 on the fees structure to achieve this. We now present the outcome of the consultation.

- 1.7** Like CP17/35, this PS does not fit directly into our annual cycle of consultation on fees, which we summarised in paragraph 1.5 of the CP. We have already published our consultation paper on wider FCA fee-rates for 2018/19 (CP18/10).⁴ That does not include fee rates payable by PBSs because we will consult on these later in the year, when PBSs have used the definition set in Appendix 1 of this PS to provide us with the data we need to calculate and allocate their fees. CP18/10 does, however, summarise the costs to be recovered from PBSs in 2018/19. The running costs have been budgeted at £2m, as reported in the FCA Business Plan 2018/19.⁵ The set-up costs are £0.5m, less than the £1m estimated in CP17/35, and will be spread over 2 years as we explain in our feedback after paragraph 2.27. From 2019/20 onwards, OPBAS fees will be brought into the usual FCA annual fees cycle.

Summary of feedback and our response

- 1.8** We received 32 written responses to CP17/35 and we invited all PBSs to a round-table discussion of our proposals, which was held on 1 December 2017. Almost all attended and, since they responded to the CP after the round-table event, their responses added further context and information to the discussions that had taken place.
- 1.9** One of the key themes of the round-table discussion and the subsequent formal responses was that we should consider important modifications to the definition of the metric on which the fees will be based, to improve the accuracy and consistency of the data reported to us by PBSs for fees purposes. We revised our definition in the light of the suggestions and circulated our re-draft to all PBSs for comment. We have deferred this PS by nearly a month in order to allow time for this, rather than publishing at the same time as CP18/10 as originally intended. We believe the delay was justified by the opportunity to incorporate any further revisions into the final data definition. We consider the definition as modified to be an improvement on our original proposal, and value the constructive engagement with PBSs which has assisted in reaching what we believe is an objective, transparent and fair method of distributing cost recovery.
- 1.10** The responses received and our feedback are set out in Chapter 2.

Equality and diversity considerations

- 1.11** We have considered the equality and diversity issues that may arise from the proposals in this PS.
- 1.12** Overall, we do not consider that the proposals adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

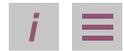
⁴ FCA Regulated fees and levies: Rates proposals 2018/19 (CP18/10, April 2018)

⁵ Business Plan 2018/19 (April 2018)

Next steps

1.13 The next steps are:

- We are writing to all PBSs asking them to submit data to us for fees purposes by 2 July 2018, using the definition in Appendix 1 of this PS.
- We will use the data to calculate a fee-rate for 2018/19. This will be set to recover both the annual running costs for 2018/19 and the set-up costs spread over 2 years.
- We will consult on the fee-rate in the autumn.
- We intend to finalise the rate in December 2018 so that we can issue invoices from January 2019.
- From April 2019 we intend to integrate the OPBAS fee into the standard fees consultation cycle, with the 2019/20 fee-rate forming part of our April 2019 CP on FCA fee-rates.



2 OPBAS fees – feedback and final requirements

(Final instrument in Appendix 1)

- 2.1** This chapter summarises the responses received on each of the questions we asked in CP17/35, together with our feedback and the changes we have made to our final requirements in the instrument in Appendix 1.
- 2.2** Our powers to recover the costs relating to OPBAS have been given to us under the OPBAS Regulations.⁶ These stand outside the Financial Services and Markets Act 2000 (FSMA) and therefore do not form part of our FSMA FEES manual. However, to ensure they are readily accessible, we have appended them as Appendix 2 of the manual. The OPBAS Regulations allow us to recover our costs through charges, which for convenience, we refer to as fees.
- 2.3** In CP18/10, we propose a new fee block, fee block D2, for PBSs. The costs to be recovered on behalf of OPBAS will be allocated to this fee block and distributed between the fee payers on the basis of the data definition in Appendix 1. Designated professional bodies (DPBs) will be in fee-block D1. Their costs are kept separate from the costs of OPBAS. Those PBSs which are also DPBs fall into both fee blocks.
- 2.4** Before reporting back on the consultation, we set out some brief comments on the costs of OPBAS.

Costs of OPBAS

- 2.5** As explained in paragraph 1.7, we will be recovering costs of £2.25m in 2018/19 – the budgeted annual running costs of £2m plus £0.25m of the £0.5m set-up costs. Many respondents prefaced their comments on the fees consultation questions with expressions of reservations about the remit of OPBAS, its anticipated resources and running costs. Several argued that none of the costs should be recovered from PBSs but should instead be paid by the government, that is, through tax. We do not have the power to use taxes to fund OPBAS. We are funded entirely by fees recovered from the bodies we supervise and receive no funding from other sources.
- 2.6** We provided summary estimates of OPBAS costs in CP17/35 for information only and did not consult on them. Since they are outside the scope of our consultation on fees, we do not provide feedback on them in this PS. OPBAS has access to all the consultation responses and is aware of the concerns raised in them. PBSs made similar points in the roundtable discussion on 1 December 2017, in other meetings and in correspondence with OPBAS. OPBAS will continue to consider these issues as part of its engagement with its stakeholders.

6 Regulation 27 of the OPBAS Regulations

Consultation responses

2.7 We received 32 written responses to the consultation. We appreciate the time and thought the PBSs put into preparing detailed responses to our questions, both in writing and in their participation at the meeting in December. Many of the responses referred back to the 1 December meeting and picked up the arguments that had been presented. Our review of their comments seeks to summarise the key issues raised fairly. We have reviewed them under the following headings:

- application fee
- tariff-base for fees
- minimum fee
- recovery of OPBAS set-up costs

Application fee

2.8 We proposed a fee of £5,000 for professional bodies requesting OPBAS to recommend to the Treasury that they should be added to the list of PBSs in Schedule 1 to the MLRs. This relates to future applications and does not affect the PBSs already listed in the MLRs. We explained that, while we have some insight into what will be involved in dealing with an application, we cannot know the exact detail until we have begun dealing with them. We considered the task was likely to be equivalent to reviewing a moderately complex FSMA application, for which the charge is £5,000. Our consultation question was:

Q1: Do you have any comments on our proposed application fee of £5,000 for professional bodies that wish to be added to the list of self-regulatory organisations in Schedule 1 to the MLRs?

2.9 Responses on the application fee were mixed. Several respondents accepted the figure. Others said it was not possible to comment since we had ourselves acknowledged that we had not fully determined what would be involved in reviewing applications. Several said they thought the figure looked too low and were concerned about additional costs being passed back to the wider population of OPBAS fee-payers. One was surprised that we had proposed a flat fee, arguing that we should take account of the size and complexity of each application. Another thought the figure looked too high, indicating that the process was too complex.

Our response

We are retaining the fee of £5,000. Having conducted further analysis, we have found no new information to change our assessment in the CP that the process is likely to be equivalent to reviewing a moderately complex FSMA application, but we will keep the figure under review. We are publishing the application form and accompanying guidance notes on the OPBAS web pages.



Tariff base for fees

2.10 The tariff base is the metric from which fees are calculated; it sets the data required to calculate fees. It is intended to provide a fair distribution of cost recovery between the various fee payers in any fee block. We discussed a number of options for the tariff base, including income and membership, but stated our preference for basing the fees on the population supervised by each PBS. This would provide an indicator of the scale of each PBS's supervisory responsibility and therefore its potential regulatory impact. We focused on 2 definitions of the supervised population under the MLRs: relevant persons, and supervised persons who are individuals.

- **Relevant persons** Relevant persons conduct certain activities which come within the scope of the MLRs.⁷ PBSs are the supervisory authorities for some relevant persons. We found that relevant persons had a disadvantage as a tariff measure for fees because a relevant person can be a firm or an individual, so a count would give the same weight to large corporations as to small partnerships or self-employed individuals. A PBS supervising a large number of small firms or sole practitioners could be unfairly charged compared to a PBS which supervises a smaller number of large firms.
- **Supervised persons who are individuals** Regulation 51 and Schedule 4 of the MLRs require PBSs to collect data that distinguishes 'supervised persons who are individuals' from firms.

2.11 'Supervised persons who are individuals' was our preferred measure. However, the term is not defined in the MLRs and so we proposed our own definition for the purposes of OPBAS cost recovery only. Data on the number of 'supervised persons who are individuals' under each PBS have been reported annually to the Treasury by the PBSs. Our discussion with PBSs raised concern that several had reported their total active membership, whereas others had tended to report sole practitioners plus relevant employees, though not necessarily using consistent criteria to identify relevant employees. Therefore we believed there were inconsistencies in the data.⁸

2.12 We attempted to introduce greater consistency by clarifying the draft definitions and guidance on which we consulted. We set out below responses to the 3 questions in the CP which investigated different aspects of the definition of the tariff base:

Q2: Do you have any comments on the different measures we have considered for the tariff base for OPBAS fee payers? Are you aware of any other measures we should consider?

2.13 None of the PBSs supported the tariff measures we had rejected. One respondent, who was not a PBS, favoured income from supervision, but that was considered impractical by the bodies supervised by OPBAS because they do not distinguish between revenue from AML fees and other sources of income.

2.14 Several respondents argued that we should base fees on the assessment by OPBAS of the risk each PBS posed, or the resources OPBAS devoted to individual PBSs. Some of these conceded that it might be necessary to accept a statistical measure in the short

⁷ As defined at Regulation 3 of the MLRs.

⁸ It should be noted that these were inconsistencies not errors, and were incidental to the reports which were not seeking statistical information, just a broad impression of the scale of supervisory activity undertaken. The inconsistencies only became material once they were being used to model fees.

term, since OPBAS was unlikely at present to have a robust basis for quantifying risk or forecasting the allocation of its resources.

2.15 Most PBSs considered that our concerns about weighting between large and small firms and individuals were valid and that focusing on individuals would, as one PBS put it, 'provide a truer and more accurate reflection of the size of the Supervisory Body and the supervised population'. Some suggested that it was in fact a risk-based measure because it was related to the 'risk presented by the persons within the supervised body'. One respondent commented, 'The number of individuals who are subject to the MLRs is a proxy for supervisory reach and risk impact'. A few doubted whether our concerns about weighting were significant in practice, arguing that the proportion of large firms was not big enough to make a difference. Nevertheless, they did not object to a count of individuals as a reasonable basis for fees.

2.16 Several PBSs commented that, whatever definition we adopted, we should make it clear in the instrument that it would be used for the sole purpose of calculating fees. As one put it, this was necessary to avoid 'a creeping trespass towards further indirect regulation and/or supervision of PBSs beyond the MLRs'.

Our response

We confirm that the data collected for fees will be used for fees only.

Some respondents urged us to base our fees on the assessment OPBAS makes of the risks presented by individual PBSs or the resources put into engaging with them. Our experience of fees elsewhere in the FCA is that these criteria do not form a sound basis for charging fee payers:

- Assessments of risk are open to challenge and lack transparency since there will often be restrictions on what we can say publicly to justify the distribution of the charges. It can also be volatile. Fee payers cannot be sure they will be charged on the same basis from year to year.
- We consider it undesirable to charge on the basis of the resources we apply to any one PBS. Most supervisory work is proactive rather than prompted by specific regulatory concerns. We would not wish to discourage fee-payers from working with us, for example on developing policy or guidance, in case it pushed up their fees.

Q3: Can you suggest any improvements to the definition of our preferred measure for OPBAS fees of 'supervised persons (under the MLRs) who are individuals'? Are there risks of double-counting? If so, how can we avoid them?

2.17 Some PBSs supported our proposed measure of 'supervised persons who are individuals', though several also suggested improvements to our definition.

2.18 In particular, the extracts we had cited from the MLRs referred to 'members'. As explained in paragraph 2.11, several of the PBSs had reported their total active



membership to the Treasury. They were concerned that quoting the MLR references to members could be confusing and risked perpetuating this over-reporting.

- 2.19** Many PBSs urged us instead to enumerate the fee metric in terms of 'beneficial owners', 'officers' and 'managers' (BOOMs), all defined in the MLRs. They include the key employees, sometimes described as principals, who are accountable for maintaining compliance with anti-money laundering requirements. They also include the individuals appointed by chambers of self-employed barristers to be responsible for compliance with the MLRs. The respondents argued that BOOMs would give a more accurate and objective count of individuals for fees purposes. They would provide a weighting for large firms, who would have more BOOMs compared with relevant sole practitioners and small firms. The MLRs require BOOMs and relevant sole practitioners to be approved by a PBS, and so this is information which all PBSs should hold.
- 2.20** Some concerns remained about the consistency of reporting even for BOOMs; one PBS commented that the definition of a BOOM is 'subjective'. Several PBSs, and groups of PBSs, said they were seeking to standardise their definitions. In particular, the Accountancy Affinity Group (AAG) have drafted a definition for BOOMs which is intended to ensure consistency across the accountancy sector. Several of the accountancy bodies confirmed that they would be using the AAG definition. One respondent said that consistency might be less important than fairness and transparency, and so 'each PBS should evidence their workings and share them with other supervisors' to give a sense of scale and provide confidence that fees are being allocated fairly.
- 2.21** Some respondents were more enthusiastic about BOOMs than others. One suggested that a count of client-facing fee-earners would be a better indicator of the regulatory risk. While conceding that BOOMs offer 'a rough and ready measure of the scale of regulated businesses', they had concerns that it was 'likely to significantly understate the relative scale of the larger businesses, particularly when income and capital employed are taken into account'. However, none of the PBSs that supervise firms said they would be unable to provide data on BOOMs.

Our response

On balance, we agree that BOOMs might provide a stronger foundation than the original definition in the draft instrument in CP17/35.

There are 2 elements to our revised definition:

- 1.** BOOMs as defined in Article 3 of the MLRs, plus
- 2.** sole practitioners who are relevant persons under the MLRs

The first element takes into consideration weightings between large and small firms which are relevant persons. The second element ensures that sole practitioners are accounted for and then restricts the count of those sole practitioners to those who are subject to the MLRs, excluding other active members. We believe this provides a clearer and simpler definition than the one we consulted on, reducing the risk of inconsistent reporting.

Some PBSs raised concerns about the consistent reporting of BOOMs. Fee-earners, who were mentioned as a possible alternative, are in our view a more disparate group than BOOMs, presenting a greater risk of inconsistent reporting, and they are not necessarily the people accountable for AML systems. We encourage the work a number of PBSs are undertaking to improve consistency in the identification of BOOMs and note that most if not all accountancy bodies intend to adopt the AAG definition.

While acknowledging that BOOMs and relevant sole practitioners may not be a perfect measure, we believe it is stronger than the alternatives. None of the PBSs who supervise firms said they would be unable to provide reliable data on BOOMs, so the metric has the practical merit of being deliverable.

Because the PBSs had not had an opportunity to see and comment on the revised definition, we decided to delay publication of the PS so that we could share it with them. The letter we sent them is at Annex 2. We received 18 responses. Many endorsed our revised definition as an improvement on the original and none objected to it. Several restated their endorsement of the detailed AAG definition to promote consistent reporting by accountancy bodies. We accordingly confirm that we will use our definition as revised for data reporting. It is set out in the instrument in Appendix 1.

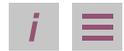
Q4: Can you suggest ways of consistently identifying those individuals who are supervised by professional body supervisors as relevant employees of relevant persons? Are there risks of double-counting? If so, how can we avoid them?

2.22 One of the reasons for recommending BOOMs as an alternative to relevant employees was that the PBSs believed they could be identified more consistently and we have referred above to the work some of them are undertaking to improve consistency.

2.23 The consensus among those responding to the consultation was that double-counting should not be an issue because there are agreements between PBSs to avoid supervisory overlap and maintain a distinction between the professional membership and the supervised population, though a few considered some risk might remain. One pointed out that, where practitioners and firms operate under more than one national jurisdiction, they might well be supervised by more than one national PBS, in which case they should in fact be counted twice.

Our response

We have accepted the argument that a count of BOOMs is likely to deliver more robust data than a count of relevant persons. We are satisfied that there is unlikely to be double-counting between PBSs, but we will keep a watching brief in liaison with them as the system matures. We agree that people working across national jurisdictions may legitimately be supervised by more than one PBS.



Minimum fee

2.24 In line with other FCA fee payers, we proposed that the smaller PBSs would pay a minimum fee only. We recognised that our costs would eventually be passed back to members and we did not want our fee to act as a barrier to entry for professionals. The PBSs with higher numbers of supervised individuals would pay the minimum plus a variable fee rate. We proposed £5,000 as a reasonable contribution towards our costs from the smaller PBSs. On the basis of the data provided to us by HM Treasury, we found that 75% of PBSs collectively supervised less than 11% of the total population, and that the largest of these supervised fewer than 6,000 individuals. We therefore suggested 6,000 as an indicative threshold, but warned that the figure might change once we had better data. Our consultation question was:

Q5: Do you think we should set a minimum fee for the OPBAS levy? If so, is £5,000 a reasonable contribution from those professional body supervisors paying minimum fees only?

2.25 There was broad, though not universal, support for the principle of a minimum fee, with some reservations on the detail:

- One respondent suggested that our proposal would leave 75% of the PBSs paying only 2% of the cost. Another commented that 75% seemed arbitrary.
- Some were concerned that minimum fee payers would not pay an additional contribution towards the set-up costs.
- Some argued that the fee was too high and would disproportionately impact small PBSs. A body with 5,000 individuals would be charged £1 per person whereas one with 1,000 would pay £5 per person.
- One respondent argued that the minimum fee should reflect the fixed cost of oversight of a PBS.
- One respondent suggested that we consider setting the minimum fee at the same level as that used for DPBs, which is £10,000.
- One argued against any minimum fee and said that all PBSs should pay a variable fee.

Our response

Since our costs may in the end be passed back to the members of the PBSs, we wish to avoid any risk that our fee might constitute, or be perceived as, a barrier to entry for any profession. Several PBSs argued that even £5,000 might be too high for the smallest PBSs, so we are not considering a higher minimum fee. For the same reason, we do not propose to pass a share of the set-up costs to minimum fee-payers. This is in line with other FCA minimum fees.

We were interested in the suggestion that there should be no minimum fee. This might provide reassurance that there is an equitable distribution of costs between all fee payers, and address concerns that a fixed rate has a disproportionate impact on the smallest fee payers. We cannot

test these hypotheses because, as discussed above, the consultation has confirmed the unreliability of the data currently available to us. Consequently, we are unable to model the effects of a variable fee on all fee payers.

We remain inclined to set the minimum fee at £5,000 but we have decided to reserve our position until we have satisfactory data on which to respond to the suggestion put to us that there should be no minimum fee. We will present our conclusions when we consult on the fee rate.

Recovery of OPBAS set-up costs

- 2.26** In CP17/35 we anticipated that the annual running costs of OPBAS would be around £2m, with estimated accumulated set-up costs and running costs up to March 2018 of £1m. We proposed to recover the accumulated costs over 2 years, so £2.5m in 2018/19 and 2019/20, and £2m thereafter. Our question was:

Q6: Do you believe we should spread recovery of the set-up costs and accumulated costs of OPBAS over 2 years?

- 2.27** Many respondents repeated their criticisms of the overall costs of OPBAS, which we have discussed in paragraphs 2.5-2.6 above. All agreed that we should recover the accumulated costs over 2 years or more.

Our response

We confirm that the running costs for OPBAS have been budgeted at £2m for 2018/19. However, the accumulated costs are lower than estimated, at £0.5m instead of £1m. We will recover these over 2 years in line with the consultation responses received, so £0.25m in 2018/19.

Next Steps

- 2.28** We have made the instrument in Appendix 1, so our requirements for OPBAS fee-payers and our definition of the tariff data are now in force.
- 2.29** As set out in our summary of the next steps in paragraph 1.13, we are writing to OPBAS fee-payers asking them to report to us the number of individuals they supervise, using the new definition. They should submit their figures to us by 2 July 2018, so that we can consult on the fee rates and confirm the minimum fee in the autumn. We intend to issue invoices in the final quarter of 2018/19.



Annex 1

List of non-confidential respondents

Aldon Accounting

Association of Accounting Technicians

Association of Chartered Certified Accountants

Association of International Accountants

Association of Taxation Technicians

Bar Council

Bar of Northern Ireland

Bar Standards Board

Certified Public Accountants Association

Chartered Accountants Ireland

Chartered Institute of Legal Executives

Chartered Institute of Management Accountants

Chartered Institute of Taxation

Council of Licensed Conveyancers

Dallas and Martin Accountancy Ltd

Faculty of Advocates

Insolvency Practitioners Association

Institute of Certified Bookkeepers

Institute of Chartered Accountants in England and Wales

Institute of Chartered Accountants Scotland

Institute of Financial Accountants

Law Society

Law Society of Scotland

NAEA Propertymark



Quest Chartered Management Accountants

Robert A Harris & Co

Solicitors Regulation Authority

Websmart Ltd



Annex 2

Letter sent to professional body supervisors after consultation



19 March 2018

Dear [x]

We are writing to invite your feedback on an amended data definition we are proposing as a measure for OPBAS fees. We would be grateful if you would respond by 4 April.

Background to the new definition

On 27 October 2017, the FCA published a consultation paper (CP17/35) which set out proposals for recovering from the professional body anti-money laundering supervisors (PBSs), the costs of running OPBAS. On 1 December 2017 the FCA hosted a round-table discussion with PBSs on the same subject.

We have received feedback in the form of formal responses to the consultation paper and from attendees during the roundtable discussion. On the basis of this feedback, we have developed an alternative definition of the data to be used to calculate the fee.

Changes to the definition

The new definition proposes a total figure based on two separate counts of individuals – (1) beneficial owners, officers and managers (BOOMs) employed by relevant persons and (2) sole practitioners who are relevant persons. The proposed definition is set out in full in Appendix 1.

Original proposal

The FCA originally proposed to base OPBAS fees on the number of 'supervised persons who are individuals' which professional bodies supervised; this term was based on terms used in Schedule 4 of the Money Laundering Regulations 2017 (MLRs). The full proposed definition was set out in the consultation on 27 October 2017, and is attached in Appendix 2 for completeness.

Further information about feedback

Several professional body supervisors raised concerns about the definition of data to be used to calculate the fee proposed in October 2017, in particular:

- the distinction between 'members' and 'supervised persons'
- the distinction between individuals and firms
- 'beneficial owners, officers and managers', defined at Regulation 3 of the MLR would make a better definition of individuals employed by firms



This commentary was very helpful and a detailed feedback statement, with further information about responses to the 27 October 2017 consultation, will be published in due course.

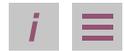
In advance of the feedback statement, we would be grateful if you would answer the following questions:

- 1. Do you have any feedback on the new proposed definition for the fees measure?**
- 2. Are you in a position to supply data on the basis of this new proposed definition, or else how much notice would you need to collect such data?**

Responses to this letter can be sent to David Cheesman at the FCA, using the address at the top of this letter or to: David.Cheesman@fca.org.uk.

Yours sincerely,

Alison Barker
Director of Specialist Supervision



Appendix 1

Proposed definition

(a) the number of all **beneficial owners, officers and managers** of all **supervised firms** that are **relevant persons**; plus

(b) the number of all **supervised** sole practitioners who are **relevant persons**.

Glossary of definitions:

beneficial owner	has the meaning given in regulation 3 of the MLR .
firm	has the meaning given in regulation 3 of the MLR .
manager	has the meaning given in regulation 3 of the MLR .
MLR	the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692).
officer	has the meaning given in regulation 3 of the MLR .
professional body supervisor	a professional body listed in Schedule 1 to the MLR .
relevant person	has the meaning given by regulation 3 of the MLR .
supervised	is subject to the supervision by a professional body supervisor in its capacity as supervisory authority within the meaning of Regulation 7(1)(b) of the MLR .

Appendix 2

Original data definition proposed in 27 October 2017 consultation paper (CP17/35)

2.1 Supervised individuals

The number of supervised persons who are individuals as set out in paragraphs 1 and 2 of Schedule 4 to the MLR.

“The number of supervised persons who are individuals as set out in paragraphs 1 and 2 of Schedule 4 to the MLR” includes:

(1) the number of “relevant persons” (as defined in Regulation 3 of the MLR) who are:
(a) members of it, or regulated or supervised by it; and (b) are individuals;

PLUS

(2) the number of “relevant employees” (as defined in Regulation 21(2)(b) of the MLR) appointed by a relevant person.

In accordance with Regulation 21(2)(b) of the MLR, a relevant employee is an employee whose work is:

(a) relevant to the relevant person’s compliance with any requirement in the MLR, or

(b) otherwise capable of contributing to the:

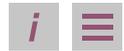
(i) identification or mitigation of the risks of money laundering and terrorist financing to which the relevant person’s business is subject; or

(ii) prevention or detection of money laundering and terrorist financing in relation to the relevant person’s business.

Where an individual is supervised under the MLR by more than one professional body supervisor and the organisations concerned have agreed which one of them will include that individual in its count of supervised individuals, the remaining organisation(s) may exclude such individual from their count of supervised individuals.

Glossary of definitions:

MLR	<i>the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692).</i>
person	<i>(in accordance with the Interpretation Act 1978) any person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a partnership).</i>
professional body supervisor	<i>one of the professional bodies listed in Schedule 1 to the MLR.</i>



Annex 3

Abbreviations in this document

AAG	Accountancy Affinity Group
AFR	Annual funding requirement
AML	Anti-money laundering (including counter terrorist financing)
BOOMs	Beneficial owners, officers and managers of supervised firms (each term as defined in Regulation 3 of the MLRs)
CP	Consultation Paper
FCA	Financial Conduct Authority
DPB	Designated professional body
FEES	FEES manual
FSMA	Financial Services and Markets Act 2000
MLRs	The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (these replace the Money Laundering Regulations 2007)
OPBAS	Office for Professional Body Anti-Money Laundering Supervision
OPBAS Regulations	Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017
PBS	Professional body AML supervisor (a 'self-regulatory organization' as defined in Regulation 3 of the MLRs)
PS	Policy Statement
Relevant persons	This is used as defined in Regulation 3 of the MLRs

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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Appendix 1

Legal Instrument

**FEES (OFFICE FOR PROFESSIONAL BODY ANTI-MONEY LAUNDERING
SUPERVISION) INSTRUMENT 2018**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the powers under Regulation 27 (costs of supervision) of the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017;
 - (2) the power under Regulation 102 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017; and
 - (3) the power in section 139A of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 30 April 2018.

Amendments to the Handbook

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

Notes

- D. In the Annex to this instrument, a “note” (indicated by “**Note:**”) after a provision indicates, for the convenience of readers, that it is a provision made pursuant to:
- (1) Regulation 27 of the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017; or
 - (2) Regulation 102 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

Citation

- E. This instrument may be cited as the Fees (Office for Professional Body Anti-Money Laundering Supervision) Instrument 2018.

By order of the Board
26 April 2018

Annex

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text, unless otherwise stated.

1 Fees Manual

1.1 Application and Purpose

...

1.1.1F G FEES Appendix 2 (Office for professional body anti-money laundering supervision fees) applies to the following persons required to pay fees to the FCA:

- (1) a person applying to become a professional body listed in Schedule 1 to the Money Laundering Regulations; and
- (2) professional bodies listed in Schedule 1 to the Money Laundering Regulations.

1.1.1G G FEES Appendix 3 (Fees payable by persons registered under the Money Laundering Regulations) applies to MLR persons registered with the FCA that are not authorised persons.

...

After FEES Appendix 1 (Unauthorised Mutuals Registration Fees Rules) insert the following new Appendices. The text is not underlined.

Appendix Office for professional body anti-money laundering supervision fees **2**

App 2.1 Introduction

Application

App 2.1.1 G This Appendix is relevant to:

- (1) **persons** applying to become **professional body supervisors**; and
- (2) **professional body supervisors.**

App 2.1.2 G The purpose of this Appendix is to set out the requirements for **professional body supervisors** to pay the application and periodic fees which, together, will provide the funding for the **FCA's** functions under

the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (“the **OPBAS Regulations**”).

- App 2.1.3 G Regulation 27 of the **OPBAS Regulations**, in summary, provides that the **FCA** may impose charges on:
- (1) a **person** applying to become a **professional body supervisor**; and
 - (2) an existing **professional body supervisor** to recover its costs of supervision.
- App 2.1.4 G (1) The application fee which will be payable by a **person** applying to become a **professional body supervisor** is set out in *FEES* Appendix 2 Annex 1.
- (2) The detail of the periodic fees which will be payable by **professional body supervisors** is set out in *FEES* Appendix 2 Annex 2.
- App 2.1.5 G In this Appendix:
- (1) a “note” (indicated by “**Note:**”) after a provision indicates, for the convenience of readers, that it is a provision made pursuant to Regulation 27 of the **OPBAS Regulations**; and
 - (2) a “G” in the margin indicates that the provision is guidance, which is designed to throw light on a particular aspect of a direction or the provisions imposing charges, but is neither binding nor an exhaustive description of a **professional body supervisor’s** obligations.

Glossary of definitions

- App 2.1.6 G In this Appendix, an expression in bold (other than in headings and titles) has the meaning given in *FEES* Appendix 2 Annex 3G.

App 2.2 Application fees imposed under Regulation 27 of the **OPBAS Regulations**

General

- App 2.2.1 A **person** making an application to the **FCA** to become a **professional body supervisor** must pay to the **FCA**, in full and without deduction, the fee specified in *FEES* Appendix 2 Annex 1.

[**Note:** Regulation 27 of the **OPBAS Regulations**]

Method of payment

- App 2.2.2 Application fees must be paid by the method specified in *FEES* Appendix 2 Annex 1.

[**Note:** Regulation 27 of the **OPBAS Regulations**]

Due dates

App 2.2.3 A **person** making an application to become a **professional body supervisor** must pay the application fee on, or before, making the application.

[**Note:** Regulation 27 of the **OPBAS Regulations**]

Refunds

App 2.2.4 G Application fees paid under this Appendix are not refundable.

App 2.3 Periodic fees imposed under Regulation 27 of the OPBAS Regulations

General

App 2.3.1 Subject to *FEES* App 2.3.2, a **professional body supervisor** must pay to the **FCA**, in full and without deduction, the periodic fee applicable to it under *FEES* Appendix 2 Annex 2 for a **fee year** during which, or part of which, the relevant professional body is included in Schedule 1 to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the **MLR**”).

[**Note:** Regulation 27 of the **OPBAS Regulations**]

Calculating the fee in the professional body supervisor’s first year

App 2.3.2 A **professional body supervisor** added to Schedule 1 to the **MLR** during the course of a **fee year** must pay the fee calculated in accordance with *FEES* App 2.3.3.

[**Note:** Regulation 27 of the **OPBAS Regulations**]

App 2.3.3 Apply the formula $(A+B) \times C$, where:

- (1) A = the minimum fee set out in Part 3 of *FEES* Appendix 2 Annex 2;
- (2) B = the variable fee due for the full **fee year**, calculated in accordance with *FEES* Appendix 2 Annex 2; and
- (3) C = the number of complete **months** (inclusive) between the **month** during which the **professional body supervisor** was added to Schedule 1 to the **MLR** and the last **month** of that **fee year** $\div 12$.

[**Note:** Regulation 27 of the **OPBAS Regulations**]

App 2.3.4 (1) A **professional body supervisor** which has not been required by *FEES* App 2.3.8 to submit the actual information set out in *FEES* Appendix 2 Annex 2 before the commencement of a given **fee year** must pay a fee

based on information calculated in accordance with *FEES* Appendix 2 Annex 2 as at [tbc] preceding the relevant **fee year**.

- (2) The information referred to in (1) is the information provided by the **professional body supervisor** in the course of its application to be added to the list of professional bodies in Schedule 1 to the **MLR**.

[**Note:** Regulation 27 of the **OPBAS Regulations**]

Time of payment

App 2.3.5 If a **professional body supervisor's** periodic fee for the previous **fee year** was at least £50,000, it must pay its periodic fee for the current **fee year** in two instalments as follows:

- (1) an amount equal to 50% of the periodic fee payable for the previous **fee year** by:
- (a) 1 April; or
 - (b) if later, within 30 **days** of the date of the invoice, in the **fee year** to which that sum relates; and
- (2) the balance of the periodic fee due for the current **fee year** by:
- (a) 1 September; or
 - (b) if later, within 30 **days** of the date of the invoice, in the **fee year** to which that sum relates.

[**Note:** Regulation 27 of the **OPBAS Regulations**]

App 2.3.6 If a **professional body supervisor's** periodic fee for the previous **fee year** was less than £50,000, it must pay the periodic fee within 30 **days** of the date of the invoice for the **fee year** to which that sum relates.

[**Note:** Regulation 27 of the **OPBAS Regulations**]

App 2.3.7 G *FEES* App 2.3.5 and *FEES* App 2.3.6 apply in relation to periodic fees payable by a **professional body supervisor** under this Appendix only. It does not relate to periodic fees payable in a professional body's capacity as a professional body designated by the Treasury under section 326 of the Financial Services and Markets Act 2000 (Designation of professional bodies) for the purposes of Part XX of that Act (Provision of Financial Services by Members of the Professions).

Information on which fees are calculated

App 2.3.8 A **professional body supervisor** must send to the **FCA** the information required under Part 1 of *FEES* Appendix 2 Annex 2 (as at the date specified in Part 2 of *FEES* Appendix 2 Annex 2) on which the periodic fee payable by the **professional body supervisor** is to be calculated.

[**Note:** Regulation 27 of the **OPBAS Regulations**]

App 2.3.9 A **professional body supervisor** must send to the **FCA** in writing the information required under *FEES* App 2.3.8 as soon as reasonably practicable after the date specified as the review date in *FEES* Appendix 2 Annex 2, and in any event within two **months** of that date.

[**Note:** Regulation 27 of the **OPBAS Regulations**]

App 2.3.10 If a **professional body supervisor** fails to send to the **FCA** the information required under *FEES* App 2.3.8 within two **months** of the review date specified in *FEES* Appendix 2 Annex 2, the **FCA** may use the information provided by the **professional body supervisor** under Regulation 51 and Schedule 4 to the **MLR** or Regulation 7 of the **OPBAS Regulations** as the basis for calculating fees payable by the **professional body supervisor**.

[**Note:** Regulation 27 of the **OPBAS Regulations**]

App 2.3.11 G The **FCA** will use the information referred to in *FEES* App 2.3.8 only for the purpose of calculating **professional body supervisors'** fees. Therefore, the definition of 'supervised individuals' set out in *FEES* Appendix 2 Annex 2 applies for the purpose of calculating those fees only.

App 2 Annex 1 **Application fee imposed under Regulation 27 of the OPBAS Regulations**

[**Note:** Regulation 27 of the **OPBAS Regulations**]

Part 1: Application fees payable to be included in Schedule 1 to the Money Laundering Regulations

Transaction	Amount payable (£)
Application to be added to the list of professional bodies in Schedule 1 to the MLR	£5,000

Part 2: Method of payment of application fees

Payment method	Additional amount or discount applicable
Electronic credit transfer	None

App 2 Annex 2 **Periodic fees imposed under Regulation 27 of the OPBAS Regulations for the period 1 April 2019 to 31 March 2020**

[**Note:** Regulation 27 of the **OPBAS Regulations**]

Part 1

This table sets out the tariff base for the **professional body supervisor** fee-block. The tariff base in this Part is the means by which the **FCA** calculates the annual periodic fees payable by a **professional body supervisor** to the **FCA**.

D.2 Professional body supervisors	Supervised individuals
Professional bodies listed in Schedule 1 to the Money Laundering Regulations.	<p>The total of:</p> <p>(a) the number of all beneficial owners, officers and managers of all supervised firms that are relevant persons; plus</p> <p>(b) the number of all supervised sole practitioners who are relevant persons.</p> <p>Where a relevant person is supervised under the MLR by more than one professional body supervisor and the professional body supervisors concerned have agreed which one of them will include the number specified in (a) or (b) above in its count of ‘supervised individuals’, the remaining professional body supervisor(s) may exclude this information from their count of ‘supervised individuals’.</p>

Part 2

This table sets out the review date for a professional body supervisor’s fees. A professional body supervisor is required to send to the FCA the information in Part 1 of this Annex as at the review date set out below, as soon as reasonably practicable, and in any event within two months of the date shown in this table.	
D.2 Professional body supervisors	The number of supervised individuals (calculated in accordance with Part 1) as at [tbc] before the relevant fee year .

Part 3

This table sets out the tariff rates applicable to **professional body supervisors**.

Fee payable in relation to 2018/2019	Amount payable
	(£)

Minimum fee, payable by all professional body supervisors subject to the OPBAS Regulations .	£5000
Variable fee, payable by professional body supervisors where the number of supervised individuals is 6,000 or more.	£[tbc] multiplied by the total number of supervised individuals in excess of the threshold of [tbc]. [See Note]
[Note: references to ‘the number of supervised individuals’ is to those supervised individuals calculated in accordance with Part 1]	

App 2
Annex
3G

Glossary of definitions

The following words or terms used in *FEES* Appendix 2 appearing in bold (other than headings and titles) have the meanings given to them below.

Expression	Definition
beneficial owner	has the meaning given in Regulation 3 of the MLR .
day	a period of 24 hours beginning at midnight.
FCA	Financial Conduct Authority.
fee year	1 April to 31 March inclusive.
firm	has the meaning given in Regulation 3 of the MLR .
manager	has the meaning given in Regulation 3 of the MLR .
MLR	the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692).
month	(in accordance with the Interpretation Act 1978) a calendar month.
officer	has the meaning given in Regulation 3 of the MLR .
OPBAS Regulations	the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (SI 2017/1301).
person	(in accordance with the Interpretation Act 1978) any

	person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a partnership).
professional body supervisor	a professional body listed in Schedule 1 to the MLR .
relevant person	has the meaning given by Regulation 3 of the MLR .
supervised	is subject to supervision by a professional body supervisor in its capacity as supervisory authority within the meaning of Regulation 7(1)(b) of the MLR .

Appendix 3 Fees payable by persons registered under the Money Laundering Regulations

App 3.1 Fees for persons registered under the Money Laundering Regulations

Application and periodic fees

App 3.1.1 G Regulation 102 of the *Money Laundering Regulations* provides the *FCA* with the power to charge fees to *MLR persons* to recover the cost of carrying out its functions under those regulations. The *FCA* charges a fee for registration forms submitted to it. The *FCA* will also charge an annual periodic fee. These charges are set out in this Appendix.

App 3.1.2	(1)	Registration fee:		
		£100		
	(2)	Periodic fee:		
		Activity group	Fee-payer falls in the activity group if:	Fee payable in 2017/18
		G.1	it is registered with the <i>FCA</i> under the <i>Money Laundering Regulations</i> or any predecessor legislation	£438

[**Note:** Regulation 102 of the *Money Laundering Regulations*]

