

**FEES (MISCELLANEOUS AMENDMENTS) (NO 5) INSTRUMENT 2012**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 99 (Fees);
  - (2) section 101 (Part 6 rules: general provisions);
  - (3) section 156 (General supplementary powers);
  - (4) section 157(1) (Guidance);
  - (5) section 234 (Industry Funding);
  - (6) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
  - (7) paragraphs 1 (General), 4 (Rules), and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI).
- 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 14 December 2012.

**Amendments to the Handbook**

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

**Citation**

- F. This instrument may be cited as the Fees (Miscellaneous Amendments) (No 5) Instrument 2012.

By order of the Board  
13 December 2012

**Annex A**

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

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

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

**Part 1**  
 This table shows how the *regulated activities* for which a *firm* has *permission* are linked to activity groups ('fee-blocks'). A *firm* can use the table to identify which fee-blocks it falls into based on its *permission*.

Activity group	Fee payer falls in the activity group if
...	
A.12 <del>Advisory</del> <u>Advisors</u> , arrangers, dealers or brokers (holding or controlling client money or assets, or both)	...
A.13 <del>Advisory</del> <u>Advisors</u> , arrangers, dealers or brokers (not holding or controlling client money or assets, or both)	...

...

**Part 2**  
 This table indicates the tariff base for each fee-block. ~~The tariff base is the means by which we measure the 'amount of business' conducted by a firm. Note that where the tariff base is the number of approved persons it may be that a particular firm has permission for relevant activities as described in Part 1 but the type of activity that the firm undertakes is not one requiring a person to be approved to undertake a relevant customer function (for example firms only giving basic advice on stakeholder products). In these circumstances, the firm will be required to pay a minimum fee only (see FEES 4 Annex 2R Part 1).~~

Activity group	Tariff base
...	
A.12	<b>APPROVED PERSONS</b> The number of <i>persons</i> approved to perform the <i>customer function</i> (CF 30);

	<p>but excluding those <i>persons</i> who work solely in the <i>firm's MTF</i> operation or solely acting in the capacity of an <i>investment manager</i> or solely advising <i>clients</i> in connection with <i>corporate finance business</i> or performing functions related to these.</p> <p><b><u>ANNUAL INCOME</u></b></p> <p><u>Annual income as defined in FEES 4 Annex 11AR.</u></p>
A.13	<p><b><u>APPROVED PERSONS</u></b></p> <p>The number of <i>persons</i> approved to perform the <i>customer function</i> (CF 30), but excluding those <i>persons</i> who work solely in the <i>firm's MTF</i> operation or solely acting in the capacity of an <i>investment manager</i> or solely advising <i>clients</i> in connection with <i>corporate finance business</i> or performing functions related to these.</p> <p><b><u>ANNUAL INCOME</u></b></p> <p><u>Annual income as defined in FEES 4 Annex 11AR.</u></p>
A.14	<p><b><u>APPROVED PERSONS</u></b></p> <p>The number of <i>persons</i> approved to perform the <i>customer function</i> (CF 30) who advise <i>clients</i> in connection with <i>corporate finance business</i> or perform related functions.</p> <p><b><u>ANNUAL INCOME</u></b></p> <p><u>Annual income as defined in FEES 4 Annex 11AR.</u></p>

...

<b>Part 3</b>	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
...	
A.12	<del>Relevant <i>approved persons</i> as at 31 December.</del> <u>Annual income for the financial year ended in the calendar year ending 31 December.</u>
A.13	<del>Relevant <i>approved persons</i> as at 31 December.</del> <u>Annual income for the financial year ended in the calendar year ending 31 December.</u>
A.14	<del>Relevant <i>approved persons</i> as at 31 December.</del> <u>Annual income for the financial year ended in the calendar year ending 31 December.</u>

...	
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...

#### 4 Annex 2R Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April 2012 to 31 March 2013

##### Part 1

This table shows the tariff rates applicable to each fee-block

...		
Activity group	Fee payable	
...		
A.12	<u>Band Width (No. of persons) (£ thousands of annual income (AI))</u>	<u>Fee (£/person) (£/£ thousand or part £ thousand of AI)</u>
	2—5 [tbc]	591.58 [tbc]
	6—35	591.58
	36—175	591.58
	176—1,600	591.58
	>1,600	591.58
	For a <i>professional firm</i> in A.12 the fee is calculated as above less 10%.	
A.13	For class (2) <i>firms</i> :	
	<u>Band Width (No. of persons) (£ thousands of annual income (AI))</u>	<u>Fee (£/person) (£/£ thousand or part £ thousand of AI)</u>
	2—3 [tbc]	1,191.47 [tbc]
	4—30	1,191.47
	31—300	1,191.47
	301—2,000	1,191.47
	>2,000	1,191.47
	For class (1) <i>firms</i> : £1,850 For a <i>professional firm</i> in A.13 the fee is calculated as above less 10%.	
A.14	<u>Band Width (No. of persons) (£</u>	<u>Fee (£/person) (£/£ thousand or part £</u>

	<u>thousands of annual income (AI)</u>	<u>thousand of AI</u>
	<del>2—4</del> [tbc]	<del>1,742.49</del> [tbc]
	<del>5—25</del>	<del>1,742.49</del>
	<del>26—80</del>	<del>1,742.49</del>
	<del>81—199</del>	<del>1,742.49</del>
	<del>&gt;199</del>	<del>1,742.49</del>
...		

After 4 Annex 11 insert the following new annex. The text is not underlined.

**4 Annex 11AR Definition of annual income for the purposes of calculating fees in fee-blocks A.12, A.13 and A.14**

<b>Annual Income</b>
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“Annual income” is an amount equal to the net amount retained by the *firm* of all income due to the *firm* in respect of, or in relation to, the provision in the *UK* of the *regulated activities* specified in *FEES* 4 Annex 1R, Part 1 as belonging to fee-blocks A.12, A.13 and A.14.

For the purposes of calculating annual income, ‘net amount retained’ means:

(a) all brokerages, *commissions*, *fees*, and other related income (for example, administration *charges*, *overrides*, profit shares etc) due to the *firm* in respect of, or in relation to, the provision in the *UK* of the *regulated activities* specified in *FEES* 4 Annex 1R, Part 1 as belonging to fee-blocks A.12, A.13 or A.14 and which the *firm* has not rebated to *clients* or passed on to other authorised firms (for example, where there is a commission chain).

Plus:

(b) any ongoing *commission* from previous business received by the *firm* during the reporting year.

Plus:

(c) the ‘commission-equivalent’ of any relevant business. In this instance, the ‘commission equivalent’ is an estimate of the amount the *firm* would otherwise have received for any *regulated activity* under (a) above, but for which it has made a business decision not to charge.

Amend the following as shown.

**4 Annex 12G      Guidance on the calculation of tariffs set out in FEES 4 Annex 1R  
Part 2**

The following ~~table sets~~ tables set out guidance on how a *firm* should calculate relevant tariffs.

Table 1: Fee-block A.4

...

Table 2: Fee-blocks A.12, A.13 and A.14

<b><u>Calculating and apportioning annual income – FEES 4 Annex 11AR</u></b>
<u>Calculating annual income</u>
<p><u>(1) Annual income should include all amounts due to the <i>firm</i> arising out of the <i>regulated activities</i> referred to in fee-blocks A.12, A.13 and A.14 for which the <i>firm</i> holds permission, including regular <i>charges</i> and instalments due to the <i>firm</i> during the reporting year.</u></p> <p><u>The <i>firm</i> should refer to the fee-block definitions in FEES 4 Annex 1R, Part 1 to decide which particular income streams should be taken into account when calculating its annual income for the purposes of fee-blocks A.12, A.13 and A.14.</u></p> <p><u>(2) To avoid any doubt, the <i>firm</i> should exclude from the calculation of its annual income any <i>regulated activities</i> belonging to fee-blocks A.12, A.13 and A.14 where the performance of such <i>regulated activities</i> is entirely incidental to the carrying out by the <i>firm</i> of the <i>regulated activity</i> of <i>managing investments</i> belonging to fee-block A.7.</u></p> <p><u>(3) To avoid double-counting, amounts which have been passed on to other <i>firms</i> may be excluded from the calculation of annual income. Transfers of income to other <i>firms</i> may be especially common within <i>groups</i> where, to present a single interface to <i>clients</i>, all amounts due to the <i>group</i> may be collected by one <i>firm</i> for subsequent redistribution to other <i>firms</i> within the <i>group</i>. It is for <i>groups</i> themselves to decide the most convenient way to report such annual income – i.e. whether the <i>firm</i> which receives the full amount should declare that full amount, or whether each <i>firm</i> in the <i>group</i> should report its separate distribution.</u></p> <p><u>(4) The <i>firm</i> should include earnings from those who will become its appointed representatives immediately after authorisation.</u></p> <p><u>(5) If any <i>fee</i> payable by the <i>firm</i> to another party for arranging a transaction with a <i>client</i> exceeds the amount payable by the end <i>client</i>, the <i>firm</i> may not take that excess into account in calculating the net amount retained but must instead net the sum payable by the end <i>client</i> to zero.</u></p> <p><u>(6) The total should include administration charges and any interest from income related to the <i>regulated activities</i>.</u></p> <p><u>(7) Items such as general business expenses (e.g. employees' salaries and overheads) should not be deducted, nor any penalties or fines that have been levied against the <i>firm</i>.</u></p> <p><u>(8) Rebates to <i>clients</i> should be excluded and also <i>fees</i> or <i>commission</i> passed to other authorised <i>firms</i>.</u></p>

(9) Authorised professional firms should exclude income from non-mainstream regulated activities. They may estimate the proportion of their business that is derived from those activities and split the income from individual invoices accordingly.

#### Apportioning income

Where a firm cannot separate its income on the basis of activities, it may apportion the income on the basis of the proportionate split of business that the firm otherwise undertakes. For instance:

(1) If a firm receives annual income from a platform-based business it may report this in line with a wider breakdown of its activities.

(2) A firm providing corporate finance advice which does not maintain records of the split between regulated activities and non-regulated activities for individual cases may calculate that regulated business accounts for a certain proportion of its business overall and apply that as a multiplier across its income.

(3) A firm may allocate ongoing commission from previous business on the basis of the type of firm it receives the commission from. This avoids tracking back legacy business which may no longer match the provider's current business model.

(4) An authorised professional firm may estimate the proportion of its business that is derived from regulated activity and split its income for individual invoices accordingly.

(5) If a firm has invested income from regulated activities, then any interest received should be reported as income, in proportion to the volume of regulated business it undertakes to avoid tracking back old payments.

(6) Firms' systems ought to be able to distinguish UK from non-UK business to establish which conduct of business regime it was conducted under. If, however, they do not relate the figures back to income streams for the specific regulated activities in a particular fee-block then the firm may make a proportionate split as described above, calculating its regulated UK income on the basis of the overall split between UK and overseas income.

(7) It is for individual firms to determine how they should calculate the appropriate split of income. The FSA is not prescriptive about the methodology. It requires only that:

(a) the approach should be proportionate – the FSA is looking for firms to make their best efforts to estimate the split;

(b) the firm must be able on request to provide a sound and clearly expressed rationale for its approach – for example, if all invoices were analysed over a particular period, the firm should be able to justify the period as representative of its business across the year;

(c) the methodology should be objective – for example, based on random sampling of invoices or random stratified sampling;

(d) the firm must on request be able to provide an audit trail which demonstrates that the choice of methodology was properly considered at an appropriate level or in the appropriate forums within the firm, and the decision periodically reviewed at the same level or in an equivalent forum.

...

**5 Annex 1                      Annual General Levy Payable in Relation to the Compulsory  
Jurisdiction for 2012/2013**

...

Compulsory jurisdiction – general levy

Industry block	Tariff base	General levy payable by firm
...		
<p>8- <u>Advisory Advisors</u>, <i>arrangers</i>, dealers or brokers holding and controlling <i>client money</i> and/or assets</p>	<p>Number of relevant <i>persons</i> approved to perform the <i>customer function</i> (CF30), <b>but excluding those <i>persons</i> solely acting in the capacity of an <i>investment manager</i> or solely advising <i>clients</i> in connection with <i>corporate finance business</i> or performing functions relating to these.</b></p> <p><u>Annual income as defined in FEES 4 Annex 11AR relating to <i>firm's relevant business</i>.</u></p>	<p>£15 per relevant <i>approved person</i> subject to a minimum levy of £35</p> <p>[tbc]</p>
<p>9 <u>Advisory Advisors</u>, <i>arrangers</i>, dealers or brokers not holding and controlling <i>client money</i> and/or assets</p>	<p>Number of relevant <i>persons</i> approved to perform the <i>customer function</i> (CF30), <b>but excluding those <i>persons</i> solely acting in the capacity of an <i>investment manager</i> or solely advising <i>clients</i> in connection with <i>corporate finance business</i> or performing functions relating to these.</b></p> <p><u>Annual income as defined in FEES 4 Annex 11AR relating to <i>firm's relevant business</i>.</u></p>	<p>£10 per relevant <i>approved person</i> subject to a minimum levy of £35</p> <p>[tbc]</p>
...		



**Annex B**

**Amendments to the Supervision manual (SUP)**

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

**16 Annex 18AR Retail Mediation Activities Return ('RMAR')**

...

**SECTION J: data required for calculation of fees**

...

<b>FSA</b>	<b>FOS</b>	<b>FSCS</b>
Annual <u>Regulated</u> Income	Relevant Annual Income	Annual Eligible Income
<u>(£s)</u>	<u>(£s)</u>	<u>(£s)</u>

...

**16 Annex 18BG Notes for completion of the Retail Mediation Activities Return ('RMAR')**

...

**Section J: data required for calculation of fees**

...

<b>Data for fees calculations</b>	<i>Firms</i> will need to report data for the purposes of calculating <i>FSA</i> , <i>FOS</i> , and <i>FSCS</i> levies.
<b>FSA</b>	The relevant information required is the tariff data set out in <i>FEES</i> 4 Annex 1R Part 2 under fee-blocks A.12, A.13, A.18 and A.19 and, <del>in respect of fee blocks A.12 and A.13,</del> the tariff data set out under the definition of “annual income” in Section J of <i>SUP</i> 16 Annex 18AR as read together with the guidance on calculating and apportioning annual income below. Note that <i>firms</i> are required to report tariff data information relating to all business falling within fee-blocks A.12/A.13/A.18/A.19 <u>and not simply that relating to retail investments.</u>
<b>FOS</b>	The relevant information required is the tariff data set out in <i>FEES</i> 5 Annex 1R industry blocks <u>8, 9,</u> 16 and 17 <del>and,</del> <del>in respect of industry blocks 8 and 9,</del> the tariff data set out <del>under the definition of “annual income” in Section J of</del>

...	<i>SUP 16 Annex 18AR</i> as read together with the guidance on calculating and apportioning annual income below. Note that <i>firms</i> are required to report tariff data information relating to all business falling within industry blocks 8/9, 16 and 17.
...	

The *guidance* in the following table sets out the *rules* which relate to the data required in Section J of *SUP 16 Annex 18AR*.

	<b><u>FSA</u></b> <u>Annual Regulated Income</u> (£s)	<b><u>FOS</u></b> <u>Relevant Annual Income</u> (£s)	<b><u>FSCS</u></b> <u>Annual Eligible Income</u> (£s)
<u>Home finance Mediation</u>	<u>FEES 4 Annex 1R Part 2 fee-block A18</u>	<u>FEES 5 Annex 1R industry block 16</u>	<u>FEES 6 Annex 3R sub-class E2</u>
<u>Non-investment insurance mediation</u>	<u>FEES 4 Annex 1R Part 2 fee-block A19</u>	<u>FEES 5 Annex 1R industry block 17</u>	<u>FEES 6 Annex 3R sub-class B2</u>
<u>Life and pensions mediation</u>	<u>FEES 4 Annex 11AR, 12G</u>	<u>FEES 5 Annex 1R industry block 8, 9</u>	<u>FEES 6 Annex 3R sub-class C2</u>
<u>Investment mediation</u>	<u>FEES 4 Annex 11AR, 12G</u>	<u>FEES 5 Annex 1R industry block 8, 9</u>	<u>FEES 6 Annex 3R sub-class D2</u>

The following table sets out the *guidance* how a *firm* should calculate annual income as defined in Section J of *SUP 16 Annex 18AR*.

<b>Guidance on calculating and apportioning annual income</b>
Calculating annual income
(1) Annual income should include all amounts due to the <i>firm</i> arising out of the <i>regulated activities</i> referred to in fee blocks A.12 and A.13 for which the <i>firm</i> holds permission, including regular <i>charges</i> and instalments due to the <i>firm</i> during the reporting year.

The *firm* should refer to the fee block definitions in FEES 4 Annex 1R, Part 1 to decide which particular income streams should be taken into account when calculating its annual income for the purposes of fee blocks A.12 and A.13.

(2) To avoid any doubt, the *firm* should exclude from the calculation of its annual income any *regulated activities* belonging to fee blocks A.12 and A.13 where the performance of such *regulated activities* is entirely incidental to the carrying out by the *firm* of the *regulated activity of managing investments* belonging to fee block A.7.

(3) To avoid double counting, amounts which have been passed on to other firms may be excluded from the calculation of annual income. Transfers of income to other firms may be especially common within *groups* where, to present a single interface to *clients*, all amounts due to the *group* may be collected by one *firm* for subsequent redistribution to other *firms* within the *group*. It is for *groups* themselves to decide the most convenient way to report such annual income — i.e. whether the *firm* which receives the full amount should declare such full amount, or whether each *firm* in the *group* should report its separate distribution.

(4) The *firm* should include earnings from those who will become its appointed representatives immediately after authorisation.

(5) If any fee payable by the *firm* to another party for arranging a transaction with a *client* exceeds the amount payable by the end *client*, the *firm* may not take that excess into account in calculating the net amount retained but must instead net the sum payable by the end *client* to zero.

(6) The total should include administration charges and any interest from income related to the *regulated activities*.

(7) Items such as general business expenses (eg employees' salaries and overheads) should not be deducted, nor any penalties or fines that have been levied against the *firm*.

(8) Rebates to *clients* should be excluded and also fees or commission passed to other authorised *firms*.

(9) Authorised professional firms should exclude income from non-mainstream regulated activities. They may estimate the proportion of their business that is derived from such activities and split the income from individual invoices accordingly.

#### Apportioning income

Where a *firm* cannot separate its income on the basis of activities, it may apportion the income on the basis of the proportionate split of business that the *firm* otherwise undertakes. For instance:

(1) If a *firm* receives annual income from a platform-based business it may report this in line with a wider breakdown of its activities.

(2) A *firm* providing corporate finance advice which does not maintain records of the split between *regulated activities* and non-regulated activities for individual cases may calculate that regulated business accounts for a certain proportion of its business overall and apply that as a multiplier across its income.

(3) A *firm* may allocate ongoing commission from previous business on the basis of the type of *firm* it receives the commission from. This avoids tracking back legacy business which may no longer match the provider's current business model.

(4) An authorised professional *firm* may estimate the proportion of its business that is derived

from *regulated activity* and split its income for individual invoices accordingly.

(5) If a *firm* has invested income from *regulated activities*, then any interest received should be reported as income, in proportion to the volume of regulated business it undertakes to avoid tracking back old payments.

(6) *Firms'* systems ought to be able to distinguish *UK* from non-*UK* business to establish which conduct of business regime it was conducted under. If, however, they do not relate the figures back to income streams for the specific *regulated activities* in a particular fee block then the *firm* may make a proportionate split as described above, calculating its regulated *UK* income on the basis of the overall split between *UK* and overseas income.

(7) It is for individual *firms* to determine how they should calculate the appropriate split of income. The *FSA* is not prescriptive about the methodology. It requires only that:

(a) the approach should be proportionate—the *FSA* is looking for *firms* to make their best efforts to estimate the split;

(b) the *firm* must be able on request to provide a sound and clearly expressed rationale for its approach—for example, if all invoices were analysed over a particular period, the *firm* should be able to justify the period as representative of its business across the year;

(c) the methodology should be objective—for example, based on random sampling of invoices or random stratified sampling;

(d) the *firm* must on request be able to provide an audit trail which demonstrates that the choice of methodology was properly considered at an appropriate level or in the appropriate forums within the *firm*, and the decision periodically reviewed at the same level or in an equivalent forum.

...