

SMALL AND MEDIUM SIZED BUSINESS CREDIT INFORMATION (FEES)
INSTRUMENT 2016

Powers exercised by the Financial Ombudsman Service

- A. The Financial Ombudsman Service Limited makes and amends the scheme rules relating to the payment of fees under the Compulsory Jurisdiction, and fixes and varies the standard terms for VJ participants relating to the payment of fees under the Voluntary Jurisdiction in Part 2 of the Annex to this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) paragraph 14 (The scheme’s operator’s rules) of Schedule 17;
 - (b) paragraph 15 (Fees) of Schedule 17; and
 - (c) paragraph 18 (Terms of reference to the scheme) of Schedule 17.
- B. The making (and amendment) of scheme rules and the fixing and variation of standard terms by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes Part 1 and Part 3 of the Annex to this instrument in the exercise of:
- (1) the following powers and related provisions in the Act:
 - (a) section 137T (General supplementary powers);
 - (b) section 139A (Power of the FCA to give guidance);
 - (c) section 213 (The scheme);
 - (d) section 214 (Provisions of the scheme);
 - (e) section 234 (Industry Funding);
 - (f) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
 - (g) paragraph 12 of Part 2 (Funding) of Schedule 1A (Further provision about the Consumer Financial Education Body); and
 - (2) the following provisions of the Small and Medium Sized Business (Credit Information) Regulations 2015:
 - (a) regulation 20 (Guidance and consultation); and
 - (b) regulation 21 (Fees and penalties) which applies (with modifications) paragraph 23 (fees) of Schedule 1ZA of the Act; and
 - (3) the following provisions of the Payment Services Regulations 2009 (SI 2009/209):
 - (a) regulation 92 (Costs of supervision); and
 - (b) regulation 93 (Guidance); and

- (4) the following provisions of the Electronic Money Regulations 2011 (SI 2011/99):
- (a) regulation 59 (Costs of supervision); and
 - (b) regulation 60 (Guidance); and
- (5) article 25 (Application of provisions of the Act to the FCA in respect of its supervision of consumer buy-to-let mortgage firms) of the Mortgage Credit Directive Order 2015 (SI 2015/910).
- D. The rule making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents to the making and amendment of the scheme rules, and approves the fixing and variation of the standard terms, by the Financial Ombudsman Service Limited which are set out in Part 2 of the Annex to this instrument.

Commencement

- F. This instrument comes into force on 1 April 2016 after The Small and Medium Sized Business (Credit Information) Instrument 2016, the Fees (Consumer Buy to Let) Instrument 2015 (FOS 2015/5 and FCA 2015/36) and the UKLA Fees (and Related Fees) Instrument 2016 (FCA 2016/13).

Amendments to the Handbook

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

Citation

- H. This instrument may be cited as the Small and Medium Sized Business Credit Information (Fees) Instrument 2016.

By order of the Board of the Financial Ombudsman Service Limited
9 March 2016

By order of the Board of the Financial Conduct Authority
17 March 2016

Annex

Amendments to the Fees manual (FEES)

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

Part 1

1.1 Application and Purpose

- 1.1.1 G (1) *FEES* applies to all *persons* required to pay a fee or levy under a provision of the *Handbook*. The purpose of this chapter is to set out to whom the *rules* and *guidance* in *FEES* apply.
- (2) *FEES* 2 (General Provisions) contains general provisions which may apply to any type of fee payer.
- (3) *FEES* 3 (Application, Notification and Vetting Fees) covers one-off fees payable on a particular event for example various application fees (including those in relation to authorisation, variation of *Part 4A* permission, registration as a *CBTL firm*, *listing* and the Basel Capital Accord) and fees relating to *designated credit reference agencies* and certain notifications and document vetting requests.
- (4) *FEES* 4 (Periodic fees) covers all periodic fees and transaction reporting fees.
- (5) *FEES* 5 (Financial Ombudsman Service Funding) relates to *FOS* levies and case fees (in *FEES* 5.5B).
- (6) *FEES* 6 (Financial Services Compensation Scheme Funding) relates to the *FSCS* levy.
- (7) *FEES* 7 relates to the *CFEB* levy.

...

2.1 Introduction

...

Purpose

...

- 2.1.5 G (1) ~~Paragraph 23 of Schedule 1ZA of the Act, regulation 92 of the *Payment Services Regulations*, and regulation 59 of the~~

~~*Electronic Money Regulations* and article 25(a) of the *MCD Order*, The following enable the *FCA* to charge fees to cover its costs and expenses in carrying out its functions:~~

- (a) paragraph 23 of Schedule 1ZA of the Act;
- (b) regulation 92 of the *Payment Services Regulations*;
- (c) regulation 59 of the *Electronic Money Regulations*;
- (d) article 25(a) of the *MCD Order*; and
- (e) regulation 21 of the *Small and Medium Sized Businesses (Credit Information) Regulations*.

- (2) The corresponding provisions for the *FSCS* levy, *FOS* levies and *CFEB* levies are set out in *FEES* 6.1, *FEES* 5.2 and *FEES* 7.1.4G respectively.
- (3) Case fees payable to the *FOS Ltd* are set out in *FEES* 5.5B.
- (4) *Fee-paying payment service providers, fee-paying electronic money issuers, and CBTL firms, and designated credit reference agencies* are not required to pay the *FSCS* levy but are liable for *FOS* levies.

...

- 2.1.5C G (1) The *FCA* also has a fee-raising power as a result of regulation 21 of the *Small and Medium Sized Businesses (Credit Information) Regulations*.
- (2) The *FCA*'s functions under these regulations are treated as functions conferred on the *FCA* under the *Act* for the purposes of its fee-raising power in paragraph 23 of Schedule 1ZA to the *Act*.

...

2.2 Late Payments and Recovery of Unpaid Fees

...

Recovery of Fees

- 2.2.3 G (1) Paragraphs 23(8) of Schedule 1ZA of the *Act* permits the *FCA* to recover fees (including *fees* relating to *payment services*, the issuance of *electronic money*, fees relating to *CBTL firms, designated credit reference agencies* 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~~

~~*FCA and FSCS* respectively. The *FCA* and *FSCS*, as relevant, will consider taking action for recovery (including interest) through the civil courts.~~

(2) Section 213(6) of the *Act* permits the *FSCS* to recover shares of the *FSCS* levy payable, as a debt owed to the *FCA* and *FSCS* respectively.

(3) The *FCA* and *FSCS*, as relevant, will consider taking action for recovery (including interest) through the civil courts.

...

3 Application, Notification and Vetting Fees

3.1 Introduction

Application

...

3.1.1A R A reference to *firm* in this chapter includes a reference to a *fee-paying payment service provider*, a *CBTL firm*, ~~and a *fee-paying electronic money issuer*~~, and a *designated credit reference agency*.

...

3.1.4 G Most of the detail of what fees are payable by the *persons* referred to in *FEES* 3.1.3 G is set out in *FEES* 3 Annex 1 - ~~*FEES* 3 Annex 10A~~12R.

...

3.1.6D G (1) *Fees for designated credit reference agencies* are set out at *FEES* 3 Annex 10B.

(2) These fees are charged under regulation 21 of the *Small and Medium Sized Businesses (Credit Information) Regulations*.

...

3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification and vetting fees payable to the *FCA*

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable	Due date
...

(zt) An applicant for registration in the <i>Financial Services Register</i> under article 8(1) of the <i>MCD Order</i>
(zv) <u>Any person to which the Designated Credit Reference Agencies Fee applies under FEES 3 Annex 10B.</u>	<u>Designated Credit Reference Agencies Fee in accordance with FEES 3 Annex 10B.</u>	<u>Within 30 days of the date of the invoice.</u>
...		

After FEES 3 Annex 10A insert the following new annex. The text is not underlined.

**3 Annex
10B**

Designated Credit Reference Agencies Fee		
(1)	R	The Designated Credit Reference Agencies Fee (the “DCR”) is only payable by a <i>designated credit reference agency</i> .
(2)	R	The DCR becomes payable by a <i>person</i> falling into (1) if the <i>FCA</i> conducts regulatory work connected to:
		(a) breaches or potential breaches by that <i>person</i> of requirements under the <i>Small and Medium Sized Businesses (Credit Information) Regulations</i> .
		(b) whether the <i>person</i> has or may have committed an offence of misleading the <i>FCA</i> under regulation 34 of the <i>Small and Medium Sized Businesses (Credit Information) Regulations</i> .
(3)	R	A <i>person</i> falling into (1) is not required to pay the DCR if the amount calculated in accordance with (4) for the <i>FCA</i> ’s regulatory work described at (2)(a) and/or (b) is less than £10,000.
(4)	R	The DCR is calculated as follows:
		(a) Determine the number of hours, or partial hours, taken by the <i>FCA</i> in performing the regulatory work described at (2)(a) and/or (b).
		(b) Use the table at <i>FEES 3 Annex 9(11)R</i> to determine the relevant pay grades of those employed by the <i>FCA</i> to perform

			the regulatory work described at (2)(a) and/or (b).
		(c)	Next, multiply the applicable pay grade rate in the table at <i>FEES 3 Annex 9(11)R</i> by the number of hours or part hours obtained under (a).
		(d)	Then add any fees and disbursements invoiced to the <i>FCA</i> by any <i>person</i> in respect of services performed by that <i>person</i> for the <i>FCA</i> in relation to assisting it in performing the regulatory work referred to in 2(a) and/or (b).
		(e)	The resulting figure is the DCR.
			The number of hours or partial hours referred to in (4)(a) are the number of hours or partial hours as recorded on the <i>FCA</i> 's systems in relation to the regulatory work referred to in (2)(a) and/or (b).
(5)	G		The hourly rates chargeable for the <i>FCA</i> pay grades are set out in the table at <i>FEES 3 Annex 9(11)R</i> Special Project Fee for Restructuring.
(6)	G	(a)	The obligation to pay the DCR is ongoing. There is therefore no limit on the number of times that the <i>FCA</i> may invoice a <i>person</i> falling into (1) for the DCR for the same regulatory work described at (2)(a) and/or (b).
		(b)	If the <i>FCA</i> issues more than one invoice, there is a single floor under (3) and not a separate one for each instalment.
(7)	G		If the DCR is payable, the full amount calculated under (4) is payable; not just the excess over £10,000.
(8)	G		The <i>FCA</i> shall provide any <i>person</i> falling into (1) with written notice that it is performing regulatory work described at 2(a) and/or (b) which is likely to exceed £10,000 calculated in accordance with (4) as soon as is reasonably practicable.

Part 2

Amend FEES 5 as shown.

5.1 Application and purpose

...

5.1.1A R A reference to *firm* in this chapter includes a reference to a *fee-paying payment service provider*, *fee-paying electronic money issuer*, ~~and~~ a CBTL firm, ~~and~~ a *designated credit reference agency*.

...

5.5.B Case fees

...

- 5.5B.7 R (1) ~~A firm, payment service provider or electronic money issuer~~ Any of the following persons which is exempt under *DISP* 1.1.12R is also exempt from *FEES* 5.5B:
- (a) a firm;
 - (b) a payment service provider;
 - (c) an electronic money issuer; and
 - (d) a designated credit reference agency.
- (2) ~~save~~ However, that it a person will only be exempt from *FEES* 5.5B in any *financial year* if it met the conditions in *DISP* 1.1.12R on 31 March of the immediately preceding *financial year*.

...

Leaving the Financial Ombudsman Service

- 5.5B.24 R Where a *respondent* ceases to be a *firm, payment service provider, electronic money issuer, CBTL firm, a designated credit reference agency* or *VJ participant* (as the case may be) part way through a *financial year* it will remain liable to pay case fees under *FEES* 5.5B in respect of cases within the jurisdiction of the *Financial Ombudsman Service*.

...

5 Annex 2R	Annual Levy Payable in Relation to the Voluntary Jurisdiction for 2015/16			
	...			
	Industry block and business activity	Tariff basis	Tariff rate	Minimum levy
	...			

13V	Persons not covered by 1V to 9V undertaking activities which are CBTL activities or would be if they were carried on from an establishment in the <i>United Kingdom</i>	[TBC]	[TBC]	[TBC]
<u>14V</u>	<u>Persons not covered by 1V to 9V providing credit information, under the <i>Small and Medium Sized Business (Credit Information) Regulations</i> or would be if it was carried on from an establishment in the <i>United Kingdom</i></u>	[TBC]	[TBC]	[TBC]

Part 3

5 Annex 1R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2015/16

...

Industry block	Tariff base	General levy payable by firm
...		
[x] <u>21</u> - <i>CBTL firms</i>	Flat fee	[TBC]
<u>22</u> - <i>designated credit reference agencies (but excluding firms in any other industry block)</i>	<u>Flat fee</u>	[TBC]