

FEES (MISCELLANEOUS AMENDMENTS) (No 11) INSTRUMENT 2018

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance);
 - (d) paragraph 23 (Fees) of Schedule 1ZA (The Financial Conduct Authority);
 - (2) paragraph 6A of the Consumer Rights (Payment Surcharges) Regulations 2012 (SI 2012/3110); and
 - (3) regulation 26 of the Financial Services and Markets Act (2000) (Benchmarks) Regulations 2018 (SI 2018/135).
- B. The rule-making powers listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 2 July 2018.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Fees (Miscellaneous Amendments) (No 11) Instrument 2018.

By order of the Board
28 June 2018

Annex

Amendments to the Fees manual (FEES)

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

3 Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

Method of payment

3.2.3 R ...

(5) ~~Payments by credit card must include an additional:~~ [deleted]

(a) ~~2% of the sum paid when paying by Visa or Mastercard; or~~

(b) ~~3.2% of the sum paid when paying by American Express.~~

...

...

**3 Annex Special Project Fee for restructuring
9R**

...		
(2) R		The SPFR becomes payable by a <i>person</i> falling into (1)(a) or (b) if it engages in, or prepares to engage in, activity which involves it undertaking or making arrangements with a view to any of the following:
	(a)	raising additional capital; or

	(b)	a significant restructuring of the <i>firm</i> or the <i>group</i> to which it belongs, including:
	(i)	mergers or acquisitions;
	(ii)	reorganising the <i>firm's group</i> structure; and
	(iii)	<i>retribution</i> ;
	(iv)	<u>a significant change to the <i>firm's</i> business model; and</u>
	(v)	<u>a significant internal change programme.</u>
...		
(8) R	Subject to FEES TP 8.1R , no <u>No</u> SPFR is payable to the <i>FCA</i> :	
	(a)	if the amount calculated in accordance with (9) in relation to the regulatory work conducted by the <i>FCA</i> totals less than £50,000 <u>in the case of an <i>FCA-authorized person</i> or £25,000 in the case of a <i>PRA-authorized person</i></u> ; or
	(b)	for time spent giving <i>guidance</i> to the <i>person</i> in relation to the same matter if the <i>FCA</i> has charged that <i>person</i> for that <i>guidance</i> .
(9) R	The SPFR for the <i>FCA</i> is calculated as follows:	
	(a)	Determine the number of hours, or part of an hour, taken by the <i>FCA</i> or, if applicable, both the <i>FCA</i> and <i>PRA</i> under FEES TP 8.1R , in relation to regulatory work conducted as a consequence of the activities referred to in (2) or (6).
	...	
...		
(11) R	Table of <i>FCA</i> hourly rates:	
	<i>FCA</i> pay grade	Hourly rate (£)
	Administrator	30 <u>45</u>

	Associate	55 <u>75</u>
	Technical Specialist	100 <u>130</u>
	Manager	110 <u>145</u>
	Any other person employed by the <i>FCA</i>	160 <u>255</u>
...		
(13) G	If the SPFR is payable, the full amount calculated under (9) is payable not just the excess over <u>£50,000</u> or <u>£25,000</u> .	
...		

...

4 Periodic fees

...

4.2 Obligation to pay periodic fees

...

Method of payment

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

...

...

4 Annex 1AR FCA activity groups, tariff bases and valuation dates

...

Part 5

This table indicates the valuation date for each fee-block. A *firm* can calculate its tariff data in respect of fees payable to the *FCA* by applying the tariff bases set out in Part 3 with reference to the valuation dates shown in this table.

Activity group	Valuation date
...	
A.9	Annual gross income (GI), valued at <u>for the most recent financial year ended in the calendar year ending 31 December.</u>
...	

...

**4 Annex
11AR**

Definition of annual income for the purposes of calculating fees in fee blocks A.13, A.14, A.18, A.19 and B. Service Companies, Recognised Investment Exchanges and Regulated Benchmark Administrators

Annual income definition
...
<p>Definition for Recognised Investment Exchanges</p> <p>“Annual income” for a <i>recognised investment exchange</i> is the gross inflow of economic benefits (i.e. cash, receivables and other assets) recognised in the <i>firm’s</i> accounts during the reporting year in respect of, or in relation to activities that comprise a necessary part of an exchange’s business as an investment exchange. <u>This should include all revenues the <i>firm</i> derives from operating multilateral trading facilities and organised trading facilities.</u></p> <p>...</p>
<p>Where the firm is a Regulated Benchmark Administrator</p> <p>“Annual income” for a <i>regulated benchmark administrator</i> is the gross inflow of economic benefits (i.e. cash, receivables and other assets) recognised in the</p>

firm's accounts during the reporting year in respect of, or in relation to activities in the UK that comprise a necessary part of its business as a *regulated benchmark administrator*.

Where the sales and marketing of a benchmark are undertaken by a separate legal entity, the *regulated benchmark administrator* is responsible for identifying the relevant income and reporting it to us as its own income. To avoid double counting, the *regulated benchmark administrator* should report only the income from sales in the UK and exclude any amount paid to it from that income to pay for its expenses as a *regulated benchmark administrator*.

...

4 Annex 11BR Definition of annual income for the purposes of calculating fees in fee blocks CC1 and CC2

(1) Annual income definition for <i>credit related regulated activities</i>	
<p>“Annual income” is the gross inflow of economic benefits (i.e. cash, receivables and other assets) recognised in the <i>firm's</i> accounts during the reporting year in respect of, or in relation to, the provision in the <i>UK</i> of the <i>regulated activities</i> specified in <i>FEES 4 Annex 1AR</i> Part 1 as belonging to fee-blocks CC1 or CC2 as applicable.</p> <p>The figure should be reported without netting off the operating costs or business expenses, but including:</p>	
(a)	all interest received on loans, brokerages, <i>commissions, fees</i> , and other related income (for example, administration <i>charges</i> , overrides, profit shares etc) due to the <i>firm</i> in respect of, or in relation to, the provision in the <i>UK</i> of the <i>credit-related regulated activities</i> specified in <i>FEES 4 Annex 1AR</i> Part 1 as belonging to fee-blocks CC1 and CC2 and which the <i>firm</i> has not rebated to <i>clients</i> or passed on to other authorised firms (for example, where there is a commission chain).
(aa)	<u>In the case of <i>consumer hire agreements</i>, interest should be calculated as the total revenue over the period of the lease minus depreciation of the asset over the same period. Where depreciation is not recorded in the accounts and a <i>firm</i> uses its own internal conventions for calculating depreciation, it must be ready on request to demonstrate that its methodology uses straight-line depreciation or an alternative depreciation method in line with the UK Financial Reporting Standard (FRS 102) or <i>International Accounting Standards (IAS)</i>. In the absence of internal conventions for calculating depreciation, the assumption should be made</u>

	<p><u>that the asset depreciates to zero over the period (or minimum period) of the lease, or (if no period is specified) over a reasonable period.</u></p> <p>Plus:</p>
...	

...

4 Annex 13G Guidance on the calculation of tariffs set out in FEES 4 Annex 1AR Part 3

<p>Table 1</p> <p>The following table sets out guidance on how a <i>firm</i> should calculate tariffs for fee blocks A.13, A.14, A.18, A.19 and B. Service Companies, Recognised Investment Exchanges and <u>Regulated</u> Benchmark Administrators.</p>	
...	
(2)	<p>For the avoidance of doubt, the only income streams reportable for a relevant fee-block are those income streams which relate to a <i>regulated activity</i> listed in that fee-block. Income streams that do not relate to a <i>regulated activity</i> listed in the relevant fee-block should not be reported. <i>Service companies, operators of recognised investment exchanges and regulated benchmark administrators</i> should report the income relating to each of these activities, excluding income from any other activities in the B fee-block on which they pay <i>FCA</i> fees. <u>Operators of recognised investment exchanges should include all income derived from operating multilateral trading facilities and organised trading facilities.</u></p> <p>...</p>
...	
<p>Table 2</p> <p>The following table sets out <i>guidance</i> on how a <i>firm</i> should calculate tariffs for fee blocks CC.1 and CC.2.</p>	
...	
<p>Exclusions</p>	
(9)	<p>The following should be excluded from the calculation of annual income:</p>

	...
(m)	<p><u>Where a <i>consumer hire agreement</i> is open ended, its term should be taken as the period over which depreciation is calculated to zero. If the agreement is in practice terminated before depreciation reaches zero, the residual value may not be subtracted from the revenue.</u></p> <p><u>Where an agreement ends before depreciation reaches zero, but is subsequently renewed, the residual value of the asset should determine its cost at the beginning of the new agreement and depreciation recalculated accordingly. For example, if the cost of the asset at the start of the original agreement was £500 and depreciation was 80%, then its residual value carried forward to the new agreement would be £100. If the asset was assumed to depreciate to zero during the original agreement, then there is no residual value to carry forward and the income for the second agreement would be the total revenue from the lease.</u></p>
...	

...

TP 8 Transitional provisions relating to FEES 3 Annex 9R and FEES 4.3.6R taking effect in 2013/14

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	5) Transitional provision: dates in force	(6) Handbook provision: coming into force
8.1	Special project fee transitional provisions				
8.1.1 [FCA] [PRA]	<i>FEES 3</i> Annex 9R	R	<p>This <i>rule</i> relates to a special project fee or part of a special project fee which has the following characteristics:</p> <p>(1) one or more of the events described in <i>FEES 3 Annex 9R</i> (2) or (6) had occurred before 1 April 2013; and</p> <p>(2) FSA employees conducted regulatory work which had been</p>	From 1 April 2013 indefinitely	1 April 2013

			<p>recorded on the <i>FSA's</i> systems and/or the <i>FSA</i> was invoiced fees and disbursements as a consequence of the applicable event or events referred to in <i>FEES 3 Annex 9R (2) or (6)</i> before 1 April 2013.</p> <p>(3) Hours or part hours worked by <i>FSA</i> staff and any fees or disbursements invoiced to the <i>FSA</i> of the kind described in <i>FEES 3 Annex 9R (9)</i> which were not accounted for in an invoice issued by the <i>FSA</i> prior to 31 March 2013 shall be named "pre LCO accrued costs" in <i>FEES TP 8.1. [deleted]</i></p>		
8.1.2 [FCA] [PRA]	<i>FEES 3 Annex 9R</i>	R	<p>In relation to the kind of special project fee specified in <i>FEES TP 8.1.1R</i>,</p> <p>(a) where one of the events referred to in <i>FEES 3 Annex 9R (6)(a)</i> had occurred, any pre LCO accrued costs shall be included in the calculation of any amount payable to the <i>FCA</i> under <i>FEES 3 Annex 9R (9)</i>;</p> <p>(b) a special project fee is payable to the <i>FCA</i> regardless of whether the amount calculated according to <i>FEES 3 Annex 9R</i> for the <i>FCA</i> is less than £50,000; and</p> <p>(c) no special project fee is payable if the sum total of adding together (i) the amount calculated in accordance with <i>FEES 3 Annex 9R (9)</i> in respect of the <i>FCA</i> and (ii) the total costs invoiced by the <i>FSA</i> before 1 April 2013 results in a total amount of less than £50,000. <i>[deleted]</i></p>	From 1 April 2013 indefinitely	1 April 2013
8.1.3 [FCA] [PRA]	<i>FEES 3 Annex 9R</i>	R	<p>In relation to the kind of special project fee specified in <i>FEES TP 8.1.1R</i>, where one of the events</p>	From 1 April 2013 indefinitely	1 April 2013

			<p>referred to in <i>FEES 3 Annex 9R (2)</i> or <i>(6)(b)</i> had occurred:</p> <p>(a) 50% of the pre-LCO accrued costs shall be included in the calculation of any amount payable to the <i>FCA</i> under <i>FEES 3 Annex 9R(9)</i>;</p> <p>(b) 50% of the pre-LCO accrued costs shall be included in the calculation of any amount payable to the <i>PRA</i> under <i>FEES 3 Annex 9R(9)</i>;</p> <p>(c) a special project fee is payable to the <i>appropriate regulator</i> regardless of whether the amount calculated according to <i>FEES 3 Annex 9R</i> for the <i>appropriate regulator</i> is less than £50,000; and</p> <p>(d) no special project fee is payable if the sum total of adding together (i) the amount calculated in accordance with <i>FEES 3 Annex 9R(9)</i> in respect of the <i>FCA</i>, (ii) the amount calculated in accordance with <i>FEES 3 Annex 9R(9)</i> in respect of the <i>PRA</i> and (iii) the total costs invoiced by the <i>FSA</i> before 1 April 2013 results in a total amount of less than £50,000. <u>[deleted]</u></p>		
8.1.4 [FCA] [PRA]	<i>FEES 3 Annex 9</i>	G	<p>As a result of FEES <i>FEES TP 8.1.3R</i>, pre-LCO accrued costs may give rise to two separate fee payment obligations following 1 April 2013, one in respect of the <i>FCA</i> and one in respect of the <i>PRA</i> if the threshold in <i>FEES TP 8.1.3(d)</i> is breached. <u>[deleted]</u></p>	From 1 April 2013 indefinitely	1 April 2013
8.1.5 [FCA] [PRA]	<i>FEES 3 Annex 9</i>	G	<p>(1) This <i>guidance</i> gives examples of how FEES TP 8.1 is intended to operate.</p> <p>(2) If an event specified in <i>FEES 3 Annex 9 (2)</i> occurred on 1 April 2012, the £50,000 threshold was</p>	From 1 April 2013 indefinitely	1 April 2013

		<p>breached on 1 November and the <i>FSA</i> invoiced for the full amount outstanding as at 1 December 2012 but issued no further invoices, any accrued hours or part hours and fees or disbursements invoiced to the <i>FSA</i> between 1 December 2012 and 1 April 2013 will be divided equally between the <i>FCA</i> and the <i>PRA</i> and an amount would be payable to the <i>FCA</i> and the <i>PRA</i> as separate fees regardless of whether the separate thresholds contained in <i>FEES 3 Annex 9 (8)</i> are met as long as the combined <i>FSA</i>, <i>FCA</i> and <i>PRA</i> costs incurred exceeded £50,000.</p> <p>(3) If an event specified in <i>FEES 3 Annex 9 (6)(a)</i> occurred on 1 February 2013, the <i>FSA</i> had begun the relevant regulatory work but had yet issued any invoices or breached the 50,000 floor before 1 April 2013, the accrued hours and disbursements will be allocated towards the <i>FCA</i>'s fee calculation. [deleted]</p>		
...				