

FEES (MULTILATERAL TRADING FACILITIES AND ORGANISED TRADING FACILITIES FEES AMENDMENTS) INSTRUMENT 2021

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) 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 137A (General rule-making power);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance); and
 - (4) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2021.

Amendments to the Handbook

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

Notes

- E. In this instrument, notes shown as “*Editor’s note:*” are intended for the convenience of the reader but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Fees (Multilateral Trading Facilities and Organised Trading Facilities Fees Amendments) Instrument 2021.

By order of the Board
25 March 2021

Annex

Amendments to the Fees manual (FEES)

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

4 Periodic fees

...

4.2 Obligation to pay periodic fees

...

Calculating all other fees in the second and subsequent years of authorisation where a full year of tariff data is not available

...

- 4.2.7K R Where the measure is not cumulative (e.g. the number of traders for fee-block A10), the *firm* must use the figure relating to the valuation date specified in *FEES* 4 Annex 1R Part 5 (e.g. 31 December for A10). Table A sets out the reporting requirements for the key fee-blocks when full actual data is not available:

Table A: calculating tariff data for second and subsequent years of authorisation when full trading figures are not available

Fee-block	Tariff base	Calculation where trading data are not available
...		
B. Market operators, MTF operators and OTF operators	Flat fee <u>Annual income for the financial year ended in the calendar year ending 31 December</u>	Not applicable. <u>Apply the formula $(A \div B) \times 12$ to arrive at the annualised figure.</u>
...		

...

[*Editor's note:* the Exiting the European Union: High Level Standards (Amendments) Instrument 2019 (FCA 2019/20) made amendments to FEES 4.2.11R. The text below takes account of the changes made by this instrument.]

- 4.2.11 R Table of periodic fees payable to the *FCA*

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
Any <i>firm</i> (except an <i>ICVC</i>)	<p>(1) Unless (2) applies, as <u>As</u> specified in <i>FEES</i> 4.3.1R in relation to <i>FEES</i> 4 Annex 2AR and <i>FEES</i> 4 Annex 11R.</p> <p>(2) Where a <i>firm</i> is paying a <i>ring-fencing implementation fee</i>, as specified in <i>FEES</i> 4 Annex 2BR.</p>	<p>(1) Unless (2) or (3) apply <u>applies</u>, on or before the relevant dates specified in <i>FEES</i> 4.3.6R.</p> <p>(2) Unless (3) applies, if <u>If</u> an event specified in column 4 occurs during the course of a <i>fee year</i>, 30 days after the occurrence of that event, or if later the dates specified in <i>FEES</i> 4.3.6R.</p> <p>(3) Where the permission is for operating a multilateral trading facility or operating an organised trading facility, the date specified in <i>FEES</i> 4 Annex 10R (Periodic fees for MTF and OTF operators).</p>	...

...

4.3 Periodic fee payable by firms (other than AIFM qualifiers, ICVCs and UCITS qualifiers)

...

Modification for firms with new or extended permissions

4.3.4 G ...

- (4) ~~These provisions do not apply to a firm's periodic fees in relation to its permission for operating a multilateral trading facility obtained from the FCA during the course of a fee year. [deleted]~~

...

Time of payment

4.3.6 R ...

- (6) Paragraphs (1) and (2) do not apply to any periodic fee in relation to a firm's permission for operating a multilateral trading facility or operating an organised trading facility and such a fee is not taken into account for the purposes of the split in (1). Instead any fee for this permission is payable; ~~on the date specified in FEES 4 Annex 10 (Periodic fees for MTF and OTF operators).~~

- (a) on 1 August; or

- (b) 30 days from the date of the invoice in the case of a firm which receives permission to be operating a multilateral trading facility or to be operating an organised trading facility or whose permission is extended to include either activity in the course of the relevant financial year.

4.4 Information on which fees are calculated

4.4.1 R A firm (other than the Society ~~or an MTF or OTF operator in relation to its MTF or OTF business~~) must notify to the FCA (in its own capacity and, if applicable, in its capacity as collection agent for the PRA) the value (as at the valuation date specified in Part 5 of FEES 4 Annex 1AR) of each element of business on which the periodic fee payable by the firm is to be calculated.

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

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Part 3

This table indicates the tariff base for each fee-block set out in Part 1.

The tariff base in this Part is the means by which the FCA measures the amount of business conducted by a firm for the purposes of calculating the annual periodic fees payable to the FCA by that firm.

Activity group	Tariff base
...	

<p>B. MTF and OTF operators</p>	<p>SUPERVISORY CATEGORY</p> <p>The general supervisory category to which the <i>MTF</i> or <i>OTF</i> operator was assigned as at the start of the relevant <i>fee year</i>.</p> <p>Annual income as defined in <i>FEES 4 Annex 11AR</i> for the purposes of the valuation date and submission time in Part 5 of <i>FEES 4 Annex 1AR</i>.</p>
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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
...	
<p>B. MTF and OTF operators</p>	<p>The start of the relevant <i>fee year</i>.</p> <p>Annual income for the financial year ended in the calendar year ending 31 December 2019, to be submitted to the <i>FCA</i> in writing by 30 September 2020.</p>
...	

...

4 Annex 2AR FCA Fee rates and EEA/Treaty firm modifications for the period from 1 April 2020 to 31 March 2021

Part 1

...

Activity group	Fee payable	
...		
<p>B. MTF and OTF operators</p>	<p>As set out in <i>FEES 4 Annex 10R</i> (Periodic fees for MTF and OTF operators).</p> <p><u>Band width</u></p>	<p><u>Fee (£) for the period from 1 April 2021 to 31 March 2022</u></p>

	<u>Annual income up to and including £100,000</u>	[tbc]
	<u>PLUS:</u>	
	<u>Band width</u>	<u>Fee (£/£ thousand or part £ thousand of income) for the period from 1 April 2021 to 31 March 2022</u>
	<u>Annual income over £100,000</u>	[tbc]
...		

...

FEES 4 Annex 10 (Periodic fees for MTF operators payable in relation to the period 1 April 2020 to 31 March 2021) is deleted in its entirety. The deleted text is not shown but the annex is marked [deleted] as shown below.

4 Annex 10R Periodic fees for MTF operators payable in relation to the period 1 April 2020 to 31 March 2021 [deleted]

Amend the following as shown.

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

...

Calculating and apportioning annual income - FEES 4 Annex 11AR	
Calculating annual income	
Defining relevant income streams	
...	
(2)	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

	<p>should not be reported. <i>Service companies</i>, operators of <i>recognised investment exchanges</i>, <i>multilateral trading facilities</i>, <i>organised trading facilities</i> and <i>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. Operators of <i>recognised investment exchanges</i> should include all income derived from operating <i>multilateral trading facilities</i> and <i>organised trading facilities</i>.</p> <p>Under <i>FEES 4 Annex 11AR</i>, where the sales and marketing of a benchmark are undertaken by a separate legal entity within the same <i>group</i>, the income generated as a result is also deemed to relate to the <i>regulated activity</i> carried on by the <i>benchmark administrator</i> and so should be reported to the <i>FCA</i> by the <i>benchmark administrator</i> as its own income (for fees setting purposes).</p> <p><i>Firms</i> should exclude from the calculation of their annual income for any particular fee-block all income directly derived from the performance of <i>regulated activities</i> belonging to other fee-blocks. For example:</p> <p>...</p> <p>(c) income from managing investments, collective investment schemes or pensions schemes (A.7 or A.9) or income from operating multi-lateral trading facilities (FEES 4 Annex 10R) <i>multilateral trading facilities</i> should be excluded from income derived from investment intermediation (A.13) or operating a <i>recognised investment exchange</i> or administering a <i>specified benchmark</i>.</p>
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