

**FEES (SPECIAL PROJECT FEE FOR RESTRUCTURING) (AMENDMENT)
INSTRUMENT 2010**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 99 (Fees);
 - (b) section 101 (Part 6 rules: general provisions);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance); and
 - (e) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
 - (2) the following provisions of the Payment Services Regulations 2009 (SI 2009/209):
 - (a) regulation 82 (Reporting requirements);
 - (b) regulation 92 (Costs of supervision); and
 - (c) regulation 93 (Guidance).
- 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 1 July 2010.

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 (Special Project Fee for Restructuring) (Amendment) Instrument 2010.

By order of the Board
24 June 2010

Annex

Amendments to the Fees manual (FEES)

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

1.1 Application and Purpose

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Application

1.1.2 R This manual applies in the following way:

- (1) FEES 1, 2 and 3 apply to: the fee payers listed in column 1 of the Table of application, notification and vetting fees in FEES 3.2.7R.
 - (a) every applicant for *Part IV permission* (including an *incoming firm applying for top-up permission*);
 - (b) every *Treaty firm* that wishes to exercise a *Treaty right* to qualify for *authorisation* under Schedule 4 to the *Act* (Treaty rights), except those providing *cross border services only*, in respect of *regulated activities* for which it does not have an *EEA right*;
 - (c) every applicant for a certificate under article 54 of the *Regulated Activities Order*;
 - (d) every applicant for an *authorisation order* for, or for recognition of, a *collective investment scheme*;
 - (e) every operator of a scheme making a notification under section 264 or section 270 of the *Act*;
 - (f) every *person* seeking to become a *designated professional body*;
 - (g) every applicant for recognition as a *recognised body* under Part XVIII of the *Act* (Recognised investment exchanges and clearing houses);
 - (h) every applicant for *listing* (under the *listing rules*);
 - (i) every applicant for approval as a *sponsor* (under the *listing rules*);
 - (j) every *issuer* (under the *listing rules*) of tranches from debt issuance programmes and *securitised derivative* tranches;

- (k) every *issuer* (under the *listing rules*) involved in specific events or transactions during the year where documentation is subject to transaction vetting by the *FSA*;
- (l) under the *prospectus rules* every *issuer, offeror* or *person* requesting approval or vetting of the documents arising in relation to specific events or transactions that it might be involved in during the year;
- (m) every applicant to be listed as a *designated investment exchange*;
- (n) every *firm* applying for variation of its *Part IV permission*;
- (o) every *firm* applying for or being concerned in an application for permission to use an *advanced prudential calculation approach* or *guidance* on the availability of such a permission (including any future proposed amendments to those approaches);
- (p) every *firm* or *person* referred to in category (u) of Column 1 of *FEES 3.2.7R*;
- (q) every applicant applying for authorisation as an *authorised payment institution* or registration as a *small payment institution* under the *Payment Services Regulations*;
- (r) every applicant for variation of its authorisation or registration under the *Payment Services Regulations*; and
- (s) every *insurer* applying for a *ceding insurer's waiver*.

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3.2.7 R Table of application, notification and vetting fees

| (1) Fee payer | (2) Fee payable | Due date |
|--|--|----------|
| ... | | |
| (ze) Any <i>firm</i> in any one or more of the A fee blocks defined in <i>FEES 4 Annex 1R Part 1</i> , except fee block <i>A.16 person to which the Special Project Fee for restructuring applies under FEES 3 Annex 9</i> . | Special Project Fee for restructuring in accordance with <i>FEES 3 Annex 9</i> . | ... |
| ... | | |

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

- (1) R The Special Project Fee for restructuring (“the SPFR”) is only payable by a ~~firm~~ person ~~if in one of the following categories:~~
- (a) ~~if it falls within~~ is in any of the A fee-blocks (as defined in Part 1 of *FEES* 4 Annex 1R), except if it is in fee-block A.16 only; or
 - (b) ~~it engages in, or prepares to engage in, the activity set out in (2); and if it is in fee-block G.3 (as defined in FEES 4 Annex 11R); or~~
 - (c) ~~none of the circumstances in (3) apply~~ if it is a recognised investment exchange; or
 - (d) if it is a recognised clearing house; or
 - (e) if it is in any of the B fee-blocks (as defined in Part 1 of FEES 4 Annex 1R).
- (2) R ~~The activity referred to in (1)(b) involves the firm undertaking or making arrangements with a view to either~~ The SPFR becomes payable by a person 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 *firm* or the *group* to which it belongs, including:
 - (i) mergers or acquisitions;
 - (ii) reorganising the *firm*’s *group* structure; and
 - (iii) *retribution*.
- (3) R ~~No SPFR is payable where:~~ under (2) if the transaction only involves the firm seeking to raise capital within the group to which it belongs.
- (a) ~~the amount calculated in accordance with (6) totals less than £50,000; or~~
 - (b) ~~the FSA has given any guidance to the firm in relation to the same matter and charged for it; or~~
 - (c) ~~the transaction only involves the firm seeking to raise capital within the group to which it belongs.~~

- (4) R Where the transaction in (2) involves raising capital outside the *group* to which the *firm* belongs, any SPFR in relation to that transaction is only payable by the largest *firm* in that *group*. The largest *firm* is the one that pays the highest periodic fee in the *FSA* financial year (the 12 *months* ending 31 March) in which the bill is raised. For the purpose of the calculation in (9), all time spent and fees and disbursements incurred in relation to the group are added together.
- (5) R The definition of *group* is limited for the purposes of calculating the SPFR to *parent undertakings* and their *subsidiary undertakings*.
- (6) R ~~The SPFR is calculated as follows:~~
- (a) ~~Determine the number of hours, or part of an hour, taken by the *FSA* in relation to regulatory work conducted as a consequence of the activities referred to in (2).~~
 - (b) ~~Next, multiply the applicable rate in the table at (8) by the number of hours or part hours obtained under (a).~~
 - (c) ~~Then add any fees and disbursements invoiced to the *FSA* by any *person* in respect of services performed by that *person* for the *FSA* in relation to assisting the *FSA* in performing the regulatory work referred to in (a).~~
 - (d) ~~The resulting figure is the fee.~~
 - (e) ~~The number of hours or part hours referred to in (a) are the number of hours or part hours as recorded on the *FSA*'s systems in relation to the regulatory work referred to in (a).~~

The SPFR also becomes payable by any *person* falling into (1) if any of the following circumstances apply to it:

- (a) an *insolvency order* is in effect as respects the *person* or the *person* is being voluntarily wound up or steps are being taken for the making of an *insolvency order* or voluntary winding up of, or with respect to, the *person* by someone entitled to take such steps; or
 - (b) the Bank of England or the Treasury have exercised a stabilisation power in respect of the *person* under the Banking Act 2009.
- (7) R ~~The first column in the table at (8) sets out the relevant pay grades of those employed by the *FSA* and the second column sets out the hourly rates chargeable in respect of those pay grades. In (6):~~
- (a) references to an *insolvency order* or winding up include the equivalent process in any jurisdiction outside the *United Kingdom*; and

- (b) references to an *insolvency order* include such an order made under the Banking Act 2009.

- (8) R Table of hourly rates:

| FSA pay grade | Hourly rate (£) |
|---|-----------------|
| Administrator | 25 |
| Associate | 50 |
| Technical Specialist | 85 |
| Manager | 90 |
| Any other person employed by the FSA | 135 |

No SPFR is payable:

- (a) if the amount calculated in accordance with (9) totals less than £50,000; or
- (b) for time spent giving *guidance* to the *person* in relation to the same matter if the *FSA* has charged that *person* for that *guidance*.

- (9) R The SPFR is calculated as follows:

- (a) Determine the number of hours, or part of an hour, taken by the *FSA* in relation to regulatory work conducted as a consequence of the activities referred to in (2) or (6).
- (b) Next, multiply the applicable rate in the table at (11) by the number of hours or part hours obtained under (a).
- (c) Then add any fees and disbursements invoiced to the *FSA* by any *person* in respect of services performed by that *person* for the *FSA* in relation to assisting the *FSA* in performing the regulatory work referred to in (a).
- (d) The resulting figure is the fee.
- (e) The number of hours or part hours referred to in (a) are the number of hours or part hours as recorded on the *FSA's* systems in relation to the regulatory work referred to in (a).

- (10) R The first column in the table at (11) sets out the relevant pay grades of those employed by the *FSA* and the second column sets out the hourly rates chargeable in respect of those pay grades.

- (11) R Table of hourly rates:

| <u>FSA pay grade</u> | <u>Hourly rate (£)</u> |
|---|------------------------|
| <u>Administrator</u> | <u>25</u> |
| <u>Associate</u> | <u>50</u> |
| <u>Technical Specialist</u> | <u>85</u> |
| <u>Manager</u> | <u>90</u> |
| <u>Any other person employed by the FSA</u> | <u>135</u> |

- (12) G The obligation to pay the SPFR is ongoing. Accordingly, there is no limitation on the number of times that the FSA may invoice a person for the SPFR in relation to the same events or circumstances referred to in (2) or (6). If the FSA does so, there is a single floor under (8)(a) and not a separate one for each instalment. Therefore, for example, if a person is subject to an administration order, the FSA may invoice the person on a periodic basis for all the related regulatory work, but may only do so once the total fee (including disbursements) equals £50,000.
- (13) G If the SPFR is payable, the full amount calculated under (9) is payable not just the excess over £50,000.
- (14) G The SPFR is a single fee. Therefore the SPFR may be payable under both (2) and (6). If it is payable under both, there is only a single floor under (8)(a), not two separate ones.

TP 5 Transitional Provisions relating to the Special Project Fee for Restructuring

5.1 Special Project Fee for Restructuring applicable to circumstances before 1 July 2010

- 5.1.1 R This rule relates to the changes to FEES 3 Annex 9 (Special Project Fee for restructuring) made by the Fees (Special Project Fee For Restructuring) (Amendment) Instrument 2010. It deals with a trigger event that occurred or started before 1 July 2010 (an “old trigger event”) but which was of a type that was only brought into the definition of trigger event by that instrument. A trigger event means a circumstance or event of a type set out in paragraphs (2) or (6) of that Annex (events or circumstances that trigger liability for the Special Project Fee for restructuring).

- 5.1.2 R An old trigger event is still a trigger event and thus triggers liability for the fee. However any regulatory work conducted before 1 July 2010 as a consequence of an old trigger event is not taken into account for the purposes of the calculation of the fee (including the floor in paragraph (8)(a) of FEES 3 Annex 9). Likewise any fees and disbursements invoiced to the FSA in respect of services performed for the FSA in relation to assisting the FSA in performing such regulatory work are not included to the extent that the invoice relates to the period before 1 July 2010.
- 5.1.3 G For example, say that a *firm* goes into administration before 1 July 2010. Say that the administration did not come within the list of events that triggered liability for the fee before 1 July 2010. The fee is still potentially payable. However the fee will not cover work carried out by the FSA before 1 July 2010. The same applies even if the administration started before 1 June 2009, when the fee first came into force.