

**FEES (MISCELLANEOUS AMENDMENTS) (NO 4) INSTRUMENT 2012**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in 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);
    - (e) section 234 (Industry Funding);
    - (f) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
    - (g) paragraphs 1 (General), 4 (Rules), and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI);
  - (2) the following powers and related provisions in the Regulated Covered Bond Regulations 2008 (SI 2008/346):
    - (a) regulations 18, 20, 24 and 25 (notification requirements);
    - (b) regulation 42 (Guidance); and
    - (c) regulation 46 and paragraph 5 of Schedule 1 (fees); and
  - (3) the following provisions of the Electronic Money Regulations 2011 (SI 2011/99):
    - (a) regulation 49 (Reporting requirements);
    - (b) regulation 59 (Costs of supervision); and
    - (c) regulation 60 (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 April 2012.

**Amendments to the Handbook**

- D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Supervision manual (SUP)	Annex C

Regulated Covered Bonds sourcebook (RCB)	Annex D
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**Citation**

- E. This instrument may be cited as the Fees (Miscellaneous Amendments) (No 4) Instrument 2012.

By order of the Board  
21 March 2012

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

*issuer*

...

- (5) (in *RCB* and *FEES* 3, where applicable) (as defined in Regulation 1(2) of the *RCB Regulations*) a person which issues a *covered bond*.

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## Annex B

## Amendments to the Fees manual (FEES)

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

## 3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
(zl) An applicant for recognition as an <i>accredited body</i>	...	
<u>(zm) An issuer applying for registration of a regulated covered bond.</u>	(1) Unless (2) applies, <u>£45,000.</u>  (2) In the case of a <u>proposed covered bond or programme where the assets in the asset pool will consist primarily of UK residential mortgages,</u> <u>£25,000.</u>	<u>On or before the date the application is made.</u>
<u>(zn) An issuer who proposes to make a material change to the contractual terms of a regulated covered bond under RCB 3.5.4D.</u>	<u>£6,500</u>	<u>On or before the date the notification under RCB 3.5.4D is made.</u>

## 3 Annex 1R Authorisation fees payable

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## Part 7 – Change of legal status – sponsors fees

An application involving only a simple change of legal status for the purposes of FEES 3.2.7R(j) is from an applicant:

(1) which is a new legal entity intending to carry on the business of an existing sponsor (as defined in the listing rules) in respect of which the FSA does not currently require, and is not proposing to require, remedial action relating to any aspect of its provision of sponsor

<u>services); and</u>	
(2) which (subject to any changes required only as a result of the change in legal status) is to:	
	<u>(a) assume all of the rights and obligations in connection with any of the sponsor activities of the existing sponsor under the listing rules;</u>
	<u>(b) make no changes to the systems and controls of the existing sponsor which ensure that the existing sponsor can carry out its role as sponsor in accordance with LR 8 (Sponsors: Premium listing);</u>
	<u>(c) have the individuals within the existing sponsor that are engaged in the provision of sponsor services engaged in the same role for the applicant; and</u>
	<u>(d) otherwise continue to comply in all respects with the criteria for approval as a sponsor set out in LR 8.6.5R.</u>

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**3 Annex 4R Application and administration fees in relation to listing rules**

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**Part 2**

Sponsor Application Fees	
Fee type	Fee amount
Application for approval as <i>sponsor</i>	£15,000
<u>Application for approval as <i>sponsor</i> following change of legal status in accordance with FEES 3 Annex 1, Part 7</u>	<u>£5,000</u>

...

**3 Annex 5R Document vetting and approval fees in relation to listing and prospectus rules**

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**Part 2**

These fees relate to approval or vetting of the documents referred to in the second column of this table arising in relation to specific events or transactions that an *issuer, offeror or person* requesting admission might be involved in during the year.

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Category 4	Non-equity <i>prospectus</i> or <i>base prospectus</i> ( <del>excluding drawdown <i>prospectus</i> or <i>base prospectus</i></del> ) Equivalent document referred to in <i>PR</i> 1.2.2R(2) or (3) or <i>PR</i> 1.2.3R(3) or (4)	...
...		
Category 6	Non-equity <i>securities note</i> and <i>summary</i> Summary document referred to in <i>PR</i> 1.2.3R(8)	£660 £825
...		
Category 8	<del>Drawdown <i>prospectus</i> or <i>base prospectus</i></del>	£660

...

**4.2 Obligation to pay periodic fees**

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4.2.11 R Table of periodic fees

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
...			
<i>Sponsors</i>	...	...	<p><u>(1) Approval of <i>sponsor</i>, unless (2) applies.</u></p> <p><u>(2) In the case of approval of a <i>sponsor</i> following a change of legal status in accordance with FEES 3 Annex 1, Part 7, the balance of the fee otherwise due from the original <i>sponsor</i>.</u></p> <p><u>Where a payment is made in accordance with (2) the original <i>sponsor's</i> obligation to pay that fee ceases.</u></p>
...			

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

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Part 2
....

Activity group	Tariff base
...	
A.10	<p><b>NUMBER OF TRADERS</b>            Any <i>employee</i> or agent, who:</p> <ul style="list-style-type: none"> <li>• ordinarily acts within the <i>United Kingdom</i> on behalf of an <i>authorised person</i> liable to pay fees to the <i>FSA</i> in its fee-block A.10 (firms dealing as principal); and who,</li> <li>• as part of their duties in relation to those activities of the <i>authorised person</i>, commits the <i>firm</i> in market dealings or in transactions in <i>securities</i> or in other <i>specified investments</i> in the course of <i>regulated activities</i>.</li> </ul> <p>But not any <i>employees</i> or agents who work solely in the <i>firm's MTF</i> operation.</p> <p><u>A firm may, as an option, report <i>employees</i> or agents as full-time equivalents (FTE), taking account of any part-time staff. In calculating the FTE, firms must take into account the total hours <i>employees</i> or agents have contracted to work for the firm and not the time <i>employees</i> or agents devote to the function of dealing as principal. Any figures using the FTE calculation to be recorded to one decimal place, rounded down to the nearest decimal place.</u></p>
...	

**4 Annex 11R Periodic fees in respect of payment services carried on by fee-paying payment service providers under the Payment Services regulations and electronic money issuance by fee-paying electronic money issues under the Electronic Money Regulations in relation to the period 1 April 2011 to 31 March 2012**

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Part 3	...
Activity Group	Tariff base

...	
G.10	<p>Average outstanding electronic money as defined under regulation 2(1) of the <i>Electronic Money Regulations</i>.</p> <p>This is the average total amount of financial liabilities related to <i>electronic money</i> in issue at the end of each calendar day over the preceding <del>six</del> <u>twelve</u> calendar months (which is the period ending on the date set out under Part 4), calculated on the first calendar day of each calendar month and applied for that calendar month (£million). <u>This tariff base applies for the period 2012/13.</u></p>
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**5 Annex 1 Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2011/12**

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Compulsory jurisdiction – general levy

Industry block	Tariff base	General levy payable by firm
...		
18 – <i>fee-paying electronic money issuers</i>	<p>For all <i>fee-paying electronic money issuers</i> except for <i>small electronic money institutions</i>, a <del>flat fee</del> <u>average outstanding <i>electronic money</i></u>, as described in <i>FEES 4 Annex 11R Part 3</i>. <u>This tariff base applies for the period 2012/13.</u></p>	£180 [tbc]
...	...	...

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## Annex C

## 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')

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## SECTION J: data required for calculation of fees

Part 1

	FSA <u>Annual Regulated Income</u>	FOS <u>Relevant Annual Income</u>	FSCS <u>Annual Eligible Income</u>
Home finance mediation	see <i>FEES 4</i> Annex 1R Part 2 fee_block A18	<i>FEES 5</i> Annex 1R industry block 16	<i>FEES 6</i> Annex 3R sub-class E2
Non-investment insurance mediation	see <i>FEES 4</i> Annex 1R Part 2 fee_block A19	<i>FEES 5</i> Annex 1R industry block 17	<i>FEES 6</i> Annex 3R sub-class B2
Life and pensions mediation	<del>n/a</del> <u>Annual income as defined in Part 2 for the financial year ended in the calendar year ending 31 December 2012 in respect of fee blocks A.12 and A.13</u>	<del>n/a</del> <u>Annual income as applied in relation the equivalent activity groups set out in Part 1 of <i>FEES 4</i> Annex 1R in respect of industry blocks 8 and 9</u>	<i>FEES 6</i> Annex 3R sub-class C2
Investment mediation	<del>n/a</del> <u>Annual income as defined in Part 2 for the financial year ended in the calendar year ending 31 December 2012 in respect of fee blocks A.12 and A.13</u>	<del>n/a</del> <u>Annual income as applied in relation the equivalent activity groups set out in Part 1 of <i>FEES 4</i> Annex 1R in respect of industry blocks 8 and 9</u>	<i>FEES 6</i> Annex 3R sub-class D2

Number of relevant CF30s	n/a	FEES 5 Annex 1R industry block 8/9	n/a
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## **Part 2**

### **Definition of annual income**

“Annual income” for the purposes of life and pensions mediation and investment mediation in respect of the data required for the calculation of FSA and FOS fees, 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 and A.13.

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 or A.13 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.

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

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**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.18 and A.19 and, in respect of fee-blocks A.12 and A.13, 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 and not simply that relating to retail investments.
<b>FOS</b>	The relevant information required is the tariff data set out in <i>FEES</i> 5 Annex 1R industry blocks 8/9, 16 and 17 and, in respect of industry blocks 8 and 9, 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 investments industry blocks 8/9, 16 and 17.
...	

...

For reporting dates after end February 2008, *firms* should report the information in their year end *RMAR*. *Firms* which do not yet have data for a full 12 months ending on their *accounting reference date* (for example if they have not traded for a complete financial year by the time of the *accounting reference date*) should complete Section J with an 'annualised' figure based on the actual income up to their *accounting reference date*. That is, such *firms* should pro-rate the actual figure as if the *firm* had been trading for 12 months up to the *accounting reference date*. So for a *firm* with 2 months of actual income of £5000 as at its *accounting reference date*, the 'annualised' figure that the *firm* should report is £30,000.

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

## Guidance on calculating and apportioning annual income

### Calculating annual income

(1) Annual income should include all amounts due to the *firm* arising out of the *regulated activities* referred to in fee-blocks A.12 and A.13 for which the *firm* holds permission, including regular *charges* and instalments due to the *firm* 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.

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## Annex D

### Amendments to the Regulated Covered Bonds sourcebook (RCB)

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

Delete all of RCB 5. The deleted text is not shown.

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Amend the following as shown.

#### **Schedule 3R      Fees and other requirement payments**

The provisions relating to fees are set out in ~~RCB Chapter 5~~ FEES 3.2.7R(zm) (application fee), FEES 3.2.7R(zn) (material change fee) and in RCB 3.6.1R (administrative fee).