

**FEES (MiFID 2 APPLICATION FEES) INSTRUMENT 2017**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in 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); and
  - (d) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
- B. the rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 2 April 2017.

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument for the purposes of FEES 3.
- E. The Fees manual (FEES) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Fees (MiFID 2 Application Fees) Instrument 2017.

By order of the Board  
30 March 2017

## Annex A

## Amendments to the Glossary of definitions

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

*operating an organised trading facility* (in relation to *FEES 3*), the *regulated activity* in article 25DA of the *Regulated Activities Order*, which is in summary, the operation of an *organised trading facility* on which non-equity MiFID instruments are traded.

In this definition “non-equity MiFID instrument” means any investment:

- (a) of the kind specified by articles 77, 77A, 78, 79, 80, 81, 82B, 83, 84 or 85; or
- (b) of the kind specified by article 89 of the *Regulated Activities Order*, so far as relevant to an investment falling within (a);

that is a bond, a structured finance product (within the meaning of article 2(1)(28) of *MiFIR*), an *emissions allowance*, or a derivative (within the meaning of article 2(1)(29) of *MiFIR*).

*organised trading facility* (in relation to *FEES 3*), (in accordance with article 3(1) of the *Regulated Activities Order*):

- (a) an organised trading facility (within the meaning of article 4(1)(23) of *MiFID II*) operated by an *investment firm*, a *credit institution* or a *market operator*; or
- (b) a facility which:
  - (i) is operated by an *investment firm*, a *credit institution* or a *market operator* which does not have a *Home State*; and
  - (ii) if its operator had a *Home State*, would be an *organised trading facility* within the meaning of article 4(1)(23) of *MiFID II*.

[Note: article 4(1)(23) of *MiFID II*]

*OTF* (in relation to *FEES 3*), *organised trading facility*.

## Annex B

## Amendments to the Fees manual (FEES)

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

### 3 Application, Notification and Vetting Fees

...

#### 3.2 Obligation to pay fees

...

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

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	Due date
...		
(p) A <i>firm</i> applying for a variation of its <i>Part 4A permission</i> whose fee is not payable pursuant to sub-paragraph (ga) of this table	<p>(1) Unless (2), (2A), (3), (3A), (3B), (3C) <del>or</del> (3D) <u>or 3(E)</u> applies, if the proposed new business of the <i>firm</i> would fall within one or more activity groups specified in Part 1 of <i>FEES 4 Annex 1AR</i> not applicable before the application, the fee is 50% of the highest of the tariffs set out in <i>FEES 3 Annex 1R</i> which apply to that application.</p> <p>...</p> <p><u>(3E) The fee is 12,500 if the <i>firm</i> applying:</u></p> <p><u>(i) is an <i>MTF</i> operator and the proposed new business of the <i>firm</i> is to be an <i>OTF</i> operator;</u></p> <p><u>or</u></p> <p><u>(ii) is an <i>OTF</i> operator</u></p>	On or before the date the application is made

## 3 Annex 1R

	<u>and the proposed new business of the firm is to be an MTF operator.</u>	
...		
<b>Authorisation fees payable</b>		
...		
Part 2 – Complexity Groupings <del>groupings</del> not relating to <i>credit-regulated activities</i> <del>Straightforward Cases</del>		
...		
Complex cases		
<b>Activity grouping</b>	<b>Description</b>	
...	...	
B	<i>MTF operators</i> and <u><i>OTF operators</i></u>	

...

Insert the new FEES TP 15 after FEES TP 14 (Transitional provisions relating to FEES 4 for benchmark administrators and recognised investment exchanges). The text is not underlined.

**TP 15 Transitional Provisions for the MiFID II Order**

<b>15.1</b>	<b>Introduction</b>	
15.1.1	G	<i>FEES</i> TP 15 deals with transitional arrangements for applicants applying for <i>permissions</i> as introduced by the MiFID II Order.
<b>15.2</b>	<b>Interpretation</b>	
15.2.1	R	The “MiFID II Order” is the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (SI 2017/xxxx).
15.2.2	G	The MiFID II Order makes amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order (SI 2001/544) to transpose parts of <i>MiFID II</i> .  The MiFID II Order was brought into force on 1st April 2017, and enables

			the <i>FCA</i> to determine applications made under it.	
<b>15.3</b>	<b>Application</b>			
15.3.1	R	(1)	<i>FEES</i> TP 15.4.1R applies:	
			(a)	to a <i>person</i> who:
			(i)	makes an application to the <i>FCA</i> for a <i>Part 4A permission</i> or an application for a variation of a <i>Part 4A permission</i> other than under article [15] of the MiFID II Order; and also
			(ii)	makes an application to the <i>FCA</i> for a <i>Part 4A permission</i> or an application for a variation of a <i>Part 4A permission</i> under article 15 of the MiFID II Order;
			(b)	where:
			(i)	applications under <i>FEES</i> TP 15.3.1R(1)(a)(i) and <i>FEES</i> TP 15.3.1R(1)(a)(ii) are made on the same date; or
			(ii)	an application under <i>FEES</i> TP 15.3.1R(1)(a)(i) is made before an application under <i>FEES</i> TP 15.3.1R(1)(a)(ii); and
			(c)	either:
			(i)	the applications under <i>FEES</i> TP 15.3.1R(1)(a)(i) and <i>FEES</i> TP 15.3.1R(1)(a)(ii) are made on the same date; or
			(ii)	an application under <i>FEES</i> TP 15.3.1R(1)(a)(i) is made before an application under <i>FEES</i> TP 15.3.1R(1)(a)(ii), where the following two conditions apply:
			(A)	a draft of the application described in <i>FEES</i> TP 15.3.1R(1)(a)(ii) is received by the <i>FCA</i> before the date the MiFID II Order came into force; and
			(B)	the applicant confirmed that the draft application can be treated as a formal application on or after the date that the MiFID II Order came into force.

15.3.2	G	<i>FEES</i> TP 15.4.1R does not apply to <i>dual regulated firms</i> which are <i>authorised</i> or have applied to become <i>authorised</i> by the <i>PRA</i> .	
<b>15.4</b>			
<b>Calculation of fees payable under FEES 3.2.1R</b>			
15.4.1	R	Where this <i>rule</i> applies, the fee payable under <i>FEES</i> 3.2.1R in respect of the application described under <i>FEES</i> TP 15.3.1R(1)(b) is any positive amount that results from the following calculation:	
		(1)	the fee payable under the application described under <i>FEES</i> TP 15.3.1R(1)(a)(ii); LESS
		(2)	the fee paid for the application described under <i>FEES</i> TP 15.3.1R(1)(a)(i).
<b>15.5</b>			
<b>Transitional provisions: dates in force</b>			
15.5.1	R	<i>FEES</i> TP 15 will remain in force until 3 January 2018.	