

Response to the FSA Consultation Paper 11/21 Regulatory Fees and Levies

I. About the Wholesale Markets Brokers' Association and the London Energy Brokers' Association ("WMBA")

WMBA are the European industry associations for the wholesale intermediation of Over-the-Counter (OTC) transactions in financial, energy, commodity and emissions markets and their traded derivatives. Our members are limited activity/limited licence firms that act solely as intermediaries in the said wholesale financial markets. As Inter Dealer Brokers (IDBs), members' principal client base is made up of global banks and primary dealers. The replies below to the questions in the paper should be seen in the context of WMBA members acting exclusively as intermediaries in the wholesale markets, and not as own account traders.

(Please see www.wmba.org.uk and www.leba.org.uk for information about the associations, its members and products.)

II. Introduction

WMBA welcomes the opportunity to respond to the FSA Consultation Paper 11/21: Regulatory Fees and Levies: Policy Proposals 2012/13 and looks forward to further active engagement on this topic during the transition to the new UK Regulatory Structure. Its comments are made from the viewpoint of limited licence/limited activity firms operating in the wholesale markets and currently designated as within Fee Block A12 and A13 and hence it is limiting its response to the general comments in respect of the FSA's fees policy in respect of these categories and Chapter 2 of the Consultation Paper.

III. Response

i. Summary

The current proposals would not become effective until 2013/14 and whilst the WMBA agrees with the FSA's concerns expressed in its equality impact assessment, that the current headcount basis of allocation in Fee Blocks A10, A12, A13 and A14 **may** constitute a barrier to good practice in equality for part time employees with the embryonic state of the new UK financial service infrastructure, the WMBA does not consider it appropriate to change the current methods of allocating FSA's costs in Fee Block A12, A13 and A14 at this time. Hence, WMBA would propose that the **current headcount basis is maintained as an interim measure and that a fundamental review of the current fees' policies be undertaken** once the budgets of the new PRA and FCA are more accurately determined. WMBA would welcome the opportunity to discuss its views on the future allocation of fees (see section III.ii below) with the FSA during this review. Member firms are currently expending considerable costs and resources to develop systems required for the new REMIT, EMIR, MiFID, MiFIR, MAR and Dodd-Frank and to develop income recognition systems (which may be used on a temporary basis only) does not seem to be cost justifiable.

Response to the FSA Consultation Paper 11/21 Regulatory Fees and Levies

ii. General Comments

a. ***Fundamental change in the FSA fees policy for intermediaries dealing in the wholesale markets***

The FSA Handbook SUP 10.10.7A (5) defines the Customer Function (CF30) as the function of “Dealing, as principal or agent, and arranging (bringing about) deals in investments other than a non-investment insurance contract with, or for, or in connection with **customers** where the dealing or arranging deals is governed by COB 11 (Dealing and Managing)”.

Customer is defined as:

- (1) (except in⁴ relation to⁴⁸⁶⁰ *ICOB*⁶⁰, *MCOB* 3 and *CASS* 5⁸) a *client* who is not⁴ an *eligible counterparty* for the relevant purposes^{4, 48, 3}.
- (2) (in⁴ relation to⁴ *MCOB* 3^{48, 8}) a *person* in (1) or a *person* who would be such a *person* if he were a *client*.
- (3) (in relation to⁴⁶⁰ *ICOB*⁶⁰) a *person* who is⁵³ a *policyholder*, or a prospective *policyholder*⁵³ but (except in⁶⁰ *ICOB* 2⁶⁰ (general⁶⁰ matters⁶⁰),⁶⁰ and (in respect of⁶⁰ that chapter⁶⁰)⁶⁰ *ICOB* 1⁶⁰ (application⁶⁰)) excluding a *policyholder* or prospective *policyholder* who does not make the arrangements preparatory to him concluding the *contract of insurance*^{53, 8}.
- (4) (in relation to⁴ *CASS* 5) a *client*.⁸

As can be seen from the above, where a broker is dealing purely in a designated investment for eligible counterparts in the wholesale markets and not giving advice, the handbook does not require the individual to be registered in a customer function.

WMBA are concerned that the FSA proposal to move to an income based approach to recharging fees in Fee Blocks A12 and A13 has **not adequately considered the consequences of this fundamental change in its fees policy** and the impact on a number of our members who deal exclusively for ECPs in the wholesale markets. As a result of this change, the fees for the majority of our members would increase substantially and would affect their ability to stay competitive in the professional wholesale marketplace.

b. ***Reallocation of Fee Blocks A12 and A13 to reflect the diverse nature of firms within this fee block***

The current allocation of costs within fee blocks is based on the perceived risks posed to the FSA statutory objectives by the activities of member firms within the said fee block. As a result of the diverse nature of firms within Fee Blocks A12 and A13 (ranging from Retail Service Providers to Inter Dealer Brokers operating exclusively in the wholesale markets) WMBA believes that whilst this has been indicated by the FSA in the past, the wholesale markets obtain some benefit from retail order flows, the current fee block structure is **resulting in a disproportionate cross subsidy between the wholesale market participants and firms operating in the retail sector.**

Response to the FSA Consultation Paper 11/21 Regulatory Fees and Levies

Hence, with the advent of the new regulatory structure, the WMBA would propose that the FSA take this opportunity to undertake a **comprehensive review of Fee Blocks A12 and A13** with a view to splitting costs between firms acting purely in the wholesale professional markets and firms dealing with the retail sector. For simplicity of operation and to avoid unnecessary costs, future allocations of fees in these blocks could be based on the client information held by member firms in respect of their client classification obligations. The basis of client figures could then be allocated a percentage uplift for firms who deal with the retail sector.

c. CP 10/24 Fees and Levies 2011/12 - Creation of a new CASS fee block and the amalgamation of Fee Blocks A12 and A13

The 2011/12 Consultation proposed the creation of a separate fee block for firms holding Client Money/Assets subject to CASS and the amalgamation of Fee Blocks A12 and 13. The feedback in PS 11/07 appeared positive and the FSA identified the next step as "Bearing the issues in mind, and any others that need to be considered, we intend to bring forward a formal consultation proposal (with draft rules) on the CASS fee-block at a later date."

WMBA considers that this approach and the **amalgamation of Fee Blocks A12 and A13 would alleviate any problems** with the redistribution of customer functions (CF30) highlighted in the consultation paper and therefore allow the current headcount basis to be retained for these fee blocks until a full review is undertaken. In respect of Fee Block A14 and the investment management exemption, these would be self certified in accordance with the current practice for Fee Block A10.

iii. Chapter 2 Question 2: Do you have any views on the definition and guidance we have prepared on the income measure we propose to introduce for Fee Blocks A12, A13 and A14 from 2013/14?

WMBA welcomes the FSA's pragmatic approach that "it is up to firms to determine how they should calculate the appropriate split of income", "the approach should be proportionate" and "the FSA will not be prescriptive about methodology".

However, it is concerned that:

- a. The use of the terminology **customer** in the definition of net amount retained could result in confusion as the current FSA definition of customer excludes ECPs.
- b. To ensure that the split of income is consistent across firms undertaking the same business, and hence the fees payable are proportionate, the rationale for allocation be submitted with the first return and the FSA undertake a thematic review of the assumptions.

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