Wholesale Markets Brokers' Association and London Energy Brokers' Association

Response to the FSA Consultation Paper 11/02: Regulatory Fees and Levies – Rate proposals 2011/12

I. About the Wholesale Market 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 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 11/02; Regulatory Fee and Levies-Rate Proposals 2011/12 and looks forward to further active engagement on this topic during the transition to the new UK Regulatory Structure. Our 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 we are limiting our response to Question 1, Question 8 and some general observations.

III. Response

a. Question 1: Do you have any comments on the proposed FSA minimum fees and periodic fee rates for authorised firms?

WMBA notes that the executive summary within the consultation paper provides headline figures for the financial services industry of a reduction in the net cash cost to firms (including the FSCS, FCEB and Omnibus levies) for 2011/12 of 17.7% and an average reduction in fees of 2% for the FSA Annual Funding Requirement (AFR)). The net figures are distorted for certain fee blocks and results in a gross increase in costs for WMBA members (who are not subject to the FSCS) of 8.6%. The 2011/12 budget also includes an allocation of £10.9m (2% of the overall AFR) towards the costs of the new UK Financial Services Framework which the WMBA feels should be reimbursed by central government and not market participants.

As limited licence/limited activity firms in the wholesale markets, the majority of WMBA members fall within Fee Block 12 or 13 and the increase/(decrease) in net fees for these blocks in 2011/12 are 60% and (1%) respectively. Whilst the WMBA accepts that this is a result of a more accurate allocation of resources within fee blocks, it is of the opinion that because of the diversified nature of firms within these fee blocks, its members are being asked to contribute to the additional cost of regulating the retail sector in which they do not participate.

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With the advent of the new regulatory structure, the WMBA suggests that to ensure a justifiable and proportional allocation of future funding costs, a review is undertaken of fee blocks A12 and A13 (or the potential new amalgamated fee block) with a view to splitting costs between firms acting purely in the professional markets and those dealing with retail counterparts. For simplicity, these costs could be allocated based on the client types within the permissions regime

The WMBA is also concerned that the close and continuous supervision of some regulated entities and post-ARROW remedial issues are increasing the overall costs within each fee block. WMBA respectfully requests that the FSA considers reviewing the criteria of allocating these costs and implements direct attribution of any dedicated resources to the relevant firms.

b. Question 8: Do you have any comments on the proposed 2011/12 Consumer Education Body Levy?

WMBA supports the Government's objectives of enhancing the understanding and knowledge of members of the public of financial matters and the ability of members of the public to manage their own financial affairs. However, the cost of this strategy must be proportional to the benefits achievable.

WMBA is particularly concerned about the proposed money advice service to be operated by the CEFB as there appears to be a considerable overlap between the remit of this service and the services currently provided by regulated Independent Financial Advisors (IFA) (who are to be retrained as part of the Retail Distribution Review), trade associations, member firms initiatives and the key facts documentation provided by product suppliers under the FSA rules. WMBA is also concerned that the inexperience of some end users would necessitate a very basic system (or risk the consumer misunderstanding and misusing the information received) and hence the benefits would be minimal. Rather than introducing an alternative regime, WMBA would suggest that the CEFB works closely with trade organisations, product providers and IFAs to ensure that sufficient information is available in the market (i.e. publications and advertising) for consumers to be able to make educated choices.

Whilst WMBA appreciate that it is in the entire Financial Services Industries interest to educate end users, as its members only participate in the professional wholesale markets they are having difficulty in justifying a 33% increase in these fees (and consequently increased regulatory costs as the additional fees cannot be passed on to clients in the professional markets) with limited benefit (minimal business is generated via end user order flows). Hence, WMBA would propose that within each fee block an enhanced weighting should be applied to the fees charged to firms dealing with consumers (and thus benefiting from the work of the CEFB).

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c. Other: Periodic fees in respect of security derivatives from 1 April 2011 to 31 March 2012 – FEES 4 Annex 9R.

These fees were first imposed in 2009/10 with the intention of recovering the £8.8m development and implementation costs of the SABRE II monitoring system for security derivatives. (The FSA have subsequently released figures under the Freedom of Information Act that the final costs for this development could be as much as £15m). The costs were to be recovered over 4 years and based on the number of contracts a firm executed on Regulated Investment Exchanges during the previous 12 months. As a result of the allocation policy, which is grossly unfair on WMBA members who carry out high volume low margin business in exchange traded derivatives and despite numerous requests by WMBA for a review, 5 WMBA members have contributed approximately 20% per annum of these costs.

The implementation of the AII reporting has been delayed twice in the last 18 months as a result of the changing regulatory environment and the infrastructure requirements for collecting and storing the data. These delays together with the new enhanced reporting regime proposed by EMIR and MiFID2 and the comments made at recent TMU meeting (AII reporting would be introduced as part of the Zen Project) would indicate that either the system is now obsolete (and the costs should be written off against a general reserve) or that the SABRE II system has been extended as part of the Zen Project to cover additional instruments from those originally envisaged. In these circumstances, WMBA is of the opinion that the recovery of costs based on registered derivatives contracts is not now appropriate and that the periodic fees in respect of securities derivatives for 2011/12 should be postponed/cancelled pending a full review of all future transaction reporting requirements and development costs.

The FSA are currently developing a new reporting system (Zen) for transaction reporting; however, the Consultation Paper does not indicate how the development costs for this system are to be recovered. Based on its Sabre II experience, the WMBA respectfully request that the FSA engage with industry bodies such as itself to ensure a fair and proportionate allocation of these cost to all users.