

## FSA's Discussion Paper 06/2: FOS compulsory jurisdiction funding review

### A submission by the London Investment Banking Association

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#### A. Introduction

1. LIBA is the principal trade body in the United Kingdom for firms active in the investment banking and securities industry and, in particular, the Association represents the major international investment banks which base their European and other international operations in London. Although our Members often provide a wide range of financial services – including deposit taking and asset management, for example – in this submission we have concentrated on the implications of FSA's proposals for our Members' *investment banking* business, namely the business covered by the Dealers as Principal and Corporate Finance fee blocks (we have also had regard to the advisory dealers, brokers or arrangers block covering firms controlling client money and/or assets).

#### B. The current position

2. As the Financial Services Authority and Financial Ombudsman Service already know from our previous submissions, our Members consider that it is essential that their wholesale business should be excluded when FOS fees are calculated and, broadly, the current rules achieve this in four ways:
  - i) The arrangements for allocating annual fees to fee blocks according to the number of case-handling staff the Ombudsman Service expects to need for cases from that sector;
  - ii) The recognition that the fee block tariffs should seek to reflect the extent to which only part of a firm's business is with eligible complainants (relevant business);
  - iii) Maintaining a case fee/annual fee split which limits the extent to which firms that are not exempt but which whose business does not give rise to eligible complaints should finance the FOS;
  - iv) For firms that do not do business with eligible complainants, there is an exemption – under DISP 1.1.7R – from annual fees.
3. Our Members' primary concern about the current rules – and this applies equally to the FSCS's and FSA's financing arrangements – is that the need to introduce a discount to address the "double counting" issue has not yet been recognised (although in the case of the FOS the "relevant business" rule (FEES 5.3.8R) reduces the problem to some extent).

### **C. Proposals in DP 06/2**

4. Against this background, in reviewing the options outlined in DP06/2, we have been concerned to explore the extent to which the alternatives will provide arrangements at least as successful as the treatment under the current rules for wholesale business and, as part of this, we think that the structure must not reduce incentives for firms to have good in-house complaints-handling procedures: the case fee must remain a fundamental element of the FOS fees rules, therefore.
5. We have considered the options discussed in DP 06/2 against these criteria. Of the options outside the “new model”, Option C would be unacceptable and Option D – a case fee based tariff – would be our preferred option; Option B is preferable to Option A because of the larger case fee element.
6. Although our Members are not pressing for changes to the current structure, they have considered the new model arrangements outlined in the DP. These would eliminate the current fee blocks and, instead, would combine a small flat-rate annual for all firms with a case fee. The DP suggests that a distinction might be drawn between a “firm charge” and a charge based on a firm’s permissions: in general, LIBA Members would prefer the former basis because it helps to reduce the double counting problem (although we note that for firms with few permissions the “firm charge” is likely to be greater). As regards the possibilities within the new model of introducing different cut-offs to distinguish between “larger-user” and “smaller-user” firms, for LIBA Members the aim must be to achieve a result that at least approaches the DP’s Option B – so the annual fee element must be kept to the minimum. Our Members are still considering the details but, overall, proposal F would seem to be the preferred option subject, though, to an *important proviso* – namely that the question of whether the new model is the right approach will need to be revisited if, in the future, there is any significant shift to financing the FOS through annual fees rather than case fees (given that the ring fencing provided by the current fee blocks will not be maintained). This issue is of such importance to our Members that we request that it is highlighted in the Policy Statement on the DP.

### **D. Conclusion**

7. We wish to emphasise again the importance of maintaining a system that prevents wholesale business from being taken into account when FOS fees are calculated and which reflects the “polluter pays” principle through a substantial case fee element.
8. We would be pleased, of course, to discuss the issues covered in this submission with the FSA and Ombudsman Service, or to provide further information about any of the matters which our Members have raised if that would be helpful.

**London Investment Banking Association**  
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