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FSA's 2007/08 regulatory fees and levies: CP 07/3 and Business Plan

A submission by the London Investment Banking Association

A. Introduction and major issues
B. FSA's first set of questions in CP07/3

A. Introduction and major issues

1. We have already sent FSA a summary of our understanding of the financial data provided in the 2007/08 Business Plan and CP 07/3 most relevant to the activities that LIBA's work covers, and we set out below our Members' views at this stage on FSA's first set of questions in the Consultation Paper.

2. We will be commenting on the second set of questions (10 and 16-21) next month, including question 17 which seeks comments on the proposals for 2007/08 fees for authorised firms. However, at this stage we wish to stress our Members' increasing concern about FSA's suggestion that the periodic fees for the trading and corporate finance – "wholesale" – fee-blocks should include £1.3mn for expenditure on the financial capability programme.

The need to maintain the distinction between wholesale and retail business

3. From FSA's inception a key policy has been to establish arrangements to maintain the distinction between wholesale and retail business – which was in part delivered as a by-product of the previous regulatory structure – and LIBA has stressed from the start that the fee-block arrangements initially proposed in CP 6 were acceptable to the large international firms which we represent *provided that* this distinction was not undermined. FSA's proposal to make fee-blocks A.10 and A.14 contribute approaching 8% of the financial capability expenditure in 2007/08 clearly breaches this principle and, as far as we know, there was no pre-consultation on FSA's plans.

4. Moreover, the proposals are not compatible with FSA's principles for allocating costs. FSA asserts in the CP that financial capability costs should be recovered through the periodic fees of the majority of fee-payers "as they will ultimately benefit from improved financial capability among consumers" even though, in previous years, FSA has accepted that this does not apply to international wholesale business. The central policy is that it is *only* in the case of non-firm-specific costs for activities that cut across the fee-blocks that expenditure should be allocated to *fee-blocks at large* in proportion to their overall contribution to the FSA costs that have already been attributed. In this case, however, financial capability expenditure *can* be associated with the activities covered by *particular* fee-blocks – FSA's second criteria – and the costs should be allocated accordingly, *as in the past*.

5. Not only do FSA's proposals fly in the face of the principles that have applied since N2 and earlier, therefore, because they break the link between a firm's business and the kinds of FSA expenditure to which a firm should be expected to contribute; they also result in an allocation to the wholesale fee-blocks which is wholly disproportionate. This is because the allocation is

simply determined according to the two fee-blocks' contribution to FSA's annual funding requirement – but the size of this contribution bears no relationship to the relevance of FSA's consumer education work for trading and corporate finance business.

6. In short, FSA's proposal to require trading and corporate finance business to contribute to the financial capability budget is not justified, and we are extremely concerned that the potential implications of this development have, apparently, not been acknowledged or considered. We hope that FSA will discuss this issue with us as soon as possible.

B. FSA's first set of questions in CP07/3

Policy subjects

QI: Do respondents have any comments on the proposal to levy firms for the full year's levy for the FSCS and/or the FOS unless we have received written notification of exemption from the relevant scheme(s) by 31 March of the preceding financial year?

Q2: Do you have any comments on the proposed change to make interest on overdue fees and levies payable from the due date and not fifteen days after the due date?

Q3: Do you agree with our proposal that fees for Part IV applications should represent a fair apportionment of the total costs of the application process between applicants and existing fee payers, rather than fixed proportions, which may lead to year on year changes in those application fees?

7. Our Members have not raised concerns about FSA's proposals at this stage.

Financial penalty scheme

Q4: Do you have any comments on the proposal to distribute financial penalties more widely between authorised firms?

8. Our Members do *not* support this proposal. Since N2 penalties have been applied for the benefit of firms in the fee-block(s) most relevant to the activity in respect of which the penalty was imposed: this should continue to be FSA's approach because it results in the firms that have been most adversely affected by the behaviour of a firm that has contravened the rules securing a degree of restitution (in the form of lower periodic fees). Under FSA's proposals, this benefit would largely be removed, with firms undertaking very different business having their periodic fees reduced according to a formula that bears no relationship to whether or not their activities have been adversely affected.

9. Certainly, if FSA proceeds with the CP proposals, it will be essential that "enforcement costs" are *accurately calculated*. For example, if a penalty is levied in a market abuse case as a result of the transactions in question being identified in Sabre 2, then the "costs of enforcement" should include the costs of Sabre 2 which have been borne by the firms in the A.10 fee-block.

Q5: Do you agree that authorised firms should not benefit from deductions to their fees generated by Penalties imposed on them, subject to a de minimis amount of £250?

10. Our Members support this proposal.

Regulatory reporting of fee tariff data

Q6: Do you have any comments on the proposal to disapply the requirement to complete Section J (fees) on the Retail Mediation Activities Return and the Mortgage Lending and Administration Return, for the extended population of firms reporting on those returns?

11. Our Members have no comments on this proposal.

Charging for Capital Requirements Directive work

Q7: Do you have any comments on the proposed waiver application fees for CRD implementation work in 2007/08?

12. We are pleased to note the decision not to levy a special project fee this year. However we are disappointed by the increase in the application fees. Our Members regard the fees being charged for advanced approach waivers, particularly when more than one is being sought or where the investment firm has a small number of rating models, as already being on the high-side. We would like to see more justification for these fees, specifically regarding the explanation of the increase.

Q8: Do you have any comments on the proposal to charge UK deposit-accepting subsidiaries of EEA-based parent companies for IRB waiver applications under Article 129 of the Capital Requirements Directive where we are host state?

13. Members do not consider the proposal to be clear. In particular we have concerns regarding:

- who the fees are charged against and therefore the equivalence of the charging
- what fees are chargeable
- whether a fee is chargeable or not.

14. Who fees are charged against - we think that it is your intention to assess UK deposit accepting subsidiaries individually against the group complexity table rather than consider the totality of the UK group covered by the Article 129 waiver request. 6.12 could be taken to mean that the tariff base is the complexity of the EEA-based banking group, although we assume this cannot be the intention. For groups that comprise both significant UK investment firm activity and deposit taking activity this approach could mitigate our major concern about charging home and host regulated groups on an equivalent basis by potentially lowering the fee bracket that the group as a whole would otherwise fall into. Conversely, where the UK deposit-accepting entity falls below the £5bn MELs threshold, is it the intention to make no charge to the group, whatever the scale of investment firm activity, for IRB, AMA or IMM applications? Where the group structure is such that the deposit taker predominates then we remain concerned about the equivalence of charging because of the involvement of the home regulator. Models often span group entities and therefore the work of the home state regulator is likely to be significant.

15. What the fees are charged against - It appears from question that fees will only be charged in respect of IRB waivers, i.e. not for AMA or IMM. However, this is not clear from the FEES text. Firms are therefore concerned about the overall level of fees that they might face in respect of their UK operations.

16. Whether a fee is chargeable or not - The proposal is clear that firms will only face a fee if there is a request for assistance from their home state regulator. Some members have commented that they have already been in discussion with FSA in respect of their proposed waivers for advanced approaches. However, they do not know whether these discussions have been entirely at the instigation of the FSA or whether they stem from discussions with the home regulator. Even if they stem from home state regulator requests, if these requests were received by the FSA last year, is the FSA still proposing to charge for work arising this year? They are therefore unsure as to whether they will face a fee request. Clarity is required for their internal budgeting processes.

17. Given the concerns expressed, we think that it would be helpful if the treatment of firms applying for waivers under Article 129 were separated from the general case of home regulated firms so that the first two issues identified above can be clarified. As regards the last point, early clarity from the FSA as to the status of their discussions with firms would be appreciated.

Approved Reporting Mechanisms

Q9: Do you have any comments on the proposal to charge a £20,000 application fee for reporting or trade matching systems providers applying for Approved Reporting Mechanism status under MiFID?

18. Our Members have not raised concerns about FSA's proposals at this stage.

UKLA fees

Q11: Do respondents agree with the proposal to charge a transaction fee of £50,000 for vetting 'significant' transactions?

Q12: Do you agree with our proposal to charge a new fee of £600 for vetting drawdown prospectuses and base prospectuses?

Q13: Do you agree with our proposal to lower the vetting fee for non-equity securities notes from £1,000 to £600?

Q14: Do you agree that tranche fees should be deleted as a non-annual fee category and absorbed into annual fees?

Q15: Do you agree that the document vetting fee for global depositary receipts should increase from 2,500 To £5,700 in 2007/08?

19. Our Members have not raised concerns about FSA's proposals at this stage.

Financial Services Compensation Scheme (FSCS) management expenses levy limit 2007/08

Q20: Do respondents have any comments on the proposed FSCS 2007/08 management expenses levy limit figure?

20. Our understanding is that it is proposed that the FSCS MELL for 2007/08 will be £37.5mn including, as previously, a reserve contingency (of £5.5mn) – overall, this represents an increase of 1.5% on the MELL consulted on a year ago – and that the central budget will be just over £32mn, 9% higher than expenditure budgeted for the current year. Of the £2.6mn increase, almost half is accounted for by efficiency projects. We are uncertain, however, how the figures set out in Annex 5 to the CP reconcile with the information given in Chapter 15 (the former records 2007/08 management expenses as £28.9mn), and we would be grateful if the difference could be explained to us.

21. Our Members have not raised concerns about the detail of FSA's proposals for 2007/08 at this stage, but we must stress again that it is wrong to allocate base cost expenses according to a formula determined by a fee-block's contribution to FSA's annual funding requirement – since this has no relationship to the extent to which certain kinds of business cannot give rise to compensation claims. Any radical restructuring of FSCS financing should address this issue too.

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London Investment Banking Association