



7 June 2013

Peter Cardinali
Finance and Operations – Fees Policy
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

By email: fca-cp13-01@fca.org.uk

Dear Mr Cardinali,

Re: BVCA Regulatory Committee response to the FCA Consultation Paper on 'FCA Regulated Fees and Levies: Rates Proposals 2013/14' (CP 13/1)

This response to the FCA's Consultation Paper on *FCA Regulated Fees and Levies: Rates Proposals 2013/14* ("CP 13/1") is made by the Regulatory Committee of the British Private Equity and Venture Capital Association (the "BVCA").

The BVCA is the industry body for the UK private equity and venture capital ("PE/VC") industry. With a membership of over 500 firms, the BVCA represents the vast majority of all UK-based PE/VC firms and their advisers. Its members have invested £40 billion in over 5,000 UK companies over the last five years. Companies backed by UK-based PE/VC firms employ over half a million people and 90 per. cent of UK investments in 2011 were directed at small and medium-sized businesses.

In order to focus our response appropriately, we have considered only those parts of CP 13/1 which we think raise issues relevant to PE/VC firms. Given that some of our comments are not linked to particular questions posed by CP 13/1, we have structured our response such that our general comments precede our answer to the relevant consultation question.

In short, we have become increasingly concerned about both the way in which policy changes to the FCA's fees and levies regimes are consulted upon and implemented and the way in which fee rates for individual FCA fee-blocks are set. We believe that the entire process suffers from a lack of transparency and is unnecessarily drawn-out and complex. Whilst we expressed our concerns in a letter to the FSA in January 2013, we did not receive a response.

We would be delighted to attend a meeting with the FCA to discuss the issues raised in our response and, as noted below, we would very much like to be involved in the FCA's fees review.



Yours sincerely,

Margaret Ch.

Margaret Chamberlain
Chair - BVCA Regulatory Committee



FCA CONSULTATION PAPER – FCA REGULATED FEES AND LEVIES: RATES PROPOSALS 2013/14 (CP 13/1)

General comments

1. We have become increasingly concerned about both the way in which policy changes to the FCA's fees and levies regimes are consulted upon and implemented and the way in which fee rates for individual FCA fee-blocks are set. We believe that the entire process suffers from a lack of transparency and is unnecessarily drawn-out and complex.
2. The approach to the introduction of income as the tariff base for certain intermediary fee-blocks, including fee-blocks A.12, A.13 and A.14 (fee-blocks to which a number of the BVCA's members belong), encapsulates many of our concerns. Whilst we expressed our concerns in a letter to the FSA in January 2013, we did not receive a response. As such, we reiterate our concerns below. In short, our concerns arise largely due to the lack of transparency during the consultation process and the extremely significant and, we believe, unjustified impact which the change to the tariff base (when combined with the indicative fee rates) will have on the fees paid by many firms in these fee-blocks.
3. In addition, a number of the BVCA's members have expressed concerns about the extremely complex nature of the FCA's FEES rules. Whilst we appreciate that much of the complexity and granularity is a consequence of the FCA seeking to make its fees as fair as possible, this pursuit of fairness has had the unfortunate, and clearly unintended, consequence of making the rules extremely difficult for firms to apply in practice.
4. We note that the FCA will be conducting a fees review during 2013/14. We welcome the commitment by the FCA to, "... *have an open dialogue with the industry on how [the FCA] recover[s] [its] funding from [firms]*". Given both the fundamental nature of some of the issues which the FCA proposes to consider during the course of the review – for instance, whether or not the industry should be segmented for the purpose of assessing regulatory fees and levies, alternative methods of segmentation and the basis on which the FCA's funding requirements are allocated to, and recovered from, industry segments – and our concerns outlined above, we would very much like to be involved in the review. We look forward to engaging with the FCA on the relevant issues over the coming months.

Response to relevant consultation question

- Q1: Do you have any comments on the proposed FCA 2013/14 minimum fees and variable periodic fee rates for authorised firms?**

5. We have a number of comments on the proposed FCA 2013/14 variable periodic fee rates for authorised firms in fee-blocks A.12, A.13 and A.14 ("**Intermediary Firms**") but, more fundamentally, we are deeply concerned about the general approach taken by the FSA (and, now, the FCA) to: (i) the introduction of income as the tariff base for these fee-blocks; and (ii) the introduction of the new 'FCA prudential fee-block'.

Concerns about approach to introduction of income as tariff base for certain fee-blocks

6. As a preliminary point, we should note that in principle – and subject to some concerns about the complexity of the calculations involved and whether an annual income measure correlates to the risk a firm poses to the regulatory system or the required degree of regulatory supervision (both, we understand, factors relevant to the assessment of regulatory fees payable) – we are not opposed to the use of income as the tariff base for these fee-blocks. We do, however, have concerns about the way in which the FSA approached making changes to the tariff base and we fail to understand why a change to the tariff base means that the periodic fees paid by many Intermediary Firms should increase so dramatically (as illustrated below).
7. The FSA first consulted on proposals to replace the headcount of CF30 Approved Persons with income as the tariff base for certain fee-blocks, including fee-blocks A.12, A.13 and A.14, in *Regulatory Fees and Levies: Policy Proposals for 2012/13* (October 2011) ("**CP 11/21**"). CP 11/21 did not, however, include an impact assessment and there was no indication of how significant the impact on fees may be for certain Intermediary Firms. In Handbook Notice 118 (March 2012) ("**HN 118**"), the FSA noted that, "*[t]o address the concerns respondents [to CP 11/21] raised regarding expected increases in fees for some firms, we are undertaking further impact assessment and will consult further in our October 2012 fees policy CP*". The FSA also noted that, together with the outcome of the impact assessment, it would provide indicative fee rates in its October 2012 fees policy Consultation Paper to allow firms to consider the impacts on their own fees and, "*[i]n the light of the consultation responses to the October 2012 CP proposals, and subject to FSA Board approval, those proposals will be finalised and feedback provided in February 2013*".
8. It therefore appeared, from HN 118, that Intermediary Firms would have the opportunity to review the impact assessment and indicative fee rates in the October Consultation Paper, consider the effects of the proposals on their own fees and, if necessary, submit a response to the FSA setting out any concerns before the proposals were finalised. This was not, however, the case. The proposals were not subject to further consultation before they were transposed into the FSA Handbook in December 2012. *Regulatory Fees and Levies: Policy Proposals for 2013/14* (October 2012) ("**CP 12/28**") merely confirmed that income would be introduced as the tariff base for Intermediary Firms and Chapter 6 (*Introduction of income as tariff base for some intermediary fee-blocks – impact analysis*) of CP 12/28 was not subject to formal consultation.

9. Given the very significant impact which the introduction of income as the tariff base will have on certain Intermediary Firms, particularly those with a high income to CF30 Approved Person ratio, we do not think that the process followed by the FSA in respect of changing the tariff base was fair, transparent or provided firms with sufficient opportunity to fully analyse the effects of the proposals and make representations to the FSA where appropriate. It was only when CP 12/28 was published (in which indicative fee rates were made available) that Intermediary Firms were able to assess, with even some degree of certainty, the impact which the introduction of income as the tariff base would have on their fees. There was, however, no consultation by the FSA in respect of the relevant parts of the Consultation Paper and the changes were transposed into law without, we think, due consideration of the industry's concerns.

10. Throughout the entire process it has been extremely difficult for firms to assess with any degree of accuracy how the change to the tariff base will affect the periodic fees they are required to pay. Whilst the FSA provided indicative fee rate ranges for fee-blocks A.12, A.13 and A.14 in CP 12/28, and the updated indicative fee rates in CP 13/1 for fee-blocks A.13 and A.14 fall approximately at the mid-point of the ranges previously suggested, the fee rate proposed in CP 13/1 in respect of fee-block A.12 is well outside the indicative range previously suggested. CP 12/28 suggested that the fee rate for fee-block A.12 would fall within the range £1.00 - £1.25 per £1,000 of annual income. The fee rate suggested in CP 13/1 is £2.11 per £1,000 of annual income; this represents an almost 200 per cent. increase on the mid-point suggested in CP 12/28.

11. Even now, when the FCA is due to start invoicing the majority of firms next month, there is, as we understand it, still no certainty about actual fee rates. CP 13/1 explains, in a number of places, that, "*[f]ee payers should be aware that the draft fee rates and levies in Appendix 1 are calculated using estimated fee-payers populations and tariff data, which may change when the final fee rates are calculated in June 2013. This means that final periodic fee rates for 2013/14 – which will be made by our Board at its June meeting – could vary from the draft periodic fee rates in this CP*". Furthermore, as regards fee-blocks A.12, A.13 and A.14, the FCA appears to suggest that such change may be "*significant*". We appreciate that this is the first year the FCA is using income as the relevant tariff data but it has been known since October 2011 that the tariff base may change to annual income. It is unacceptable for the FCA to now state that, "*... the validation of this data is taking longer than for other fee-blocks*" and for firms to be left so uncertain about final fee rates. Firms need more notice of final fee rates in order to be able to budget and manage cash flows appropriately.

12. Finally, not only are we concerned about the ongoing uncertainty in respect of fee rates, but we are also concerned that the final fee rates are not themselves subject to consultation. As we understand it, fee rates will simply be set by the FCA Board at its June meeting and such rates could sit outside any previously published indicative range.



We have grave concerns about this approach, particularly where there are fundamental changes to the underlying fees policy and where, as demonstrated below, changes can have such dramatic impacts on firms.

13. Whilst we appreciate that the position has, to-date, been that the FSA consulted in October each year on proposed changes to the underlying policy in respect of regulatory fees and levies and then, in March the following year, on the proposed changes to the fee rates for individual fee-blocks, where fundamental shifts in policy are proposed, splitting the consultation in such a manner makes it extremely difficult for firms to assess the impact on their business, partly because the process takes place over an unduly long period of time.
14. Going forwards we do not think such an approach will be compatible with the FCA's new 'fees governing principles', particularly those principles concerned with transparency and predictability. Indeed, a number of the BVCA's members have recently been in touch with us explaining that they do not understand why they are 'suddenly' experiencing such significant increases in estimated fee rates. We think this demonstrates that the current process – in respect of both policy and rates – is opaque, complex and difficult for firms to follow. We think it would be helpful if as part of the upcoming fees review we could explore with the FCA alternative approaches to making policy changes and setting fee rates.

Concerns about proposed fee rates for fee-blocks A.12, A.13 and A.14

15. We are not only concerned about the approach to changing the underlying tariff base for fee-blocks A.12, A.13 and A.14 but also the proposed fee rates themselves. As explained above, we fail to understand why changing the tariff base should mean that the periodic fees paid by many Intermediary Firms should increase so dramatically (as illustrated below). It would have been possible to move to an annual income tariff base without subjecting firms to such sharp increases in fees by simply setting the fee rates per £1,000 of annual income at lower levels.
16. One of the BVCA's members – which is in fee-block A.13 – has, we understand, recently been contacted by the FCA about its fees for 2013/14. This firm paid periodic fees of approximately £100,000 for the period 2012/13 but, on the basis of a recent estimate, will see an almost eight-fold increase to just over £800,000 for the period 2013/14. This is not an isolated example – we know of a number of other firms which are also concerned about steep increases in their periodic fees.
17. We appreciate that the move to income as the tariff base for these fee-blocks was transposed into law in December 2012, and that the FCA is constrained to some degree by the amount of fees it must recover from the financial services industry as a whole for the year 2013/14, but would ask that the FCA takes our concerns about these extremely

sharp, and seemingly unjustified, increases in periodic fees into account when setting the final rates.

Concerns about approach to introduction of new 'FCA prudential fee-block'.

18. Finally, and related to our concerns set out above about the general lack of transparency during the fees' consultation process, we are concerned about the way in which the introduction of the new 'FCA prudential fee-block' has been approached. As we understand it, 'solo-regulated firms' – such as Intermediary Firms – will be required to pay not only periodic fees in respect of their relevant fee-block(s), but also an additional fee to the FCA in respect of prudential supervision.
19. We consider that insufficient attention was drawn to this additional fee in CP 12/28 and that, as no indicative fee rate was provided in that Consultation Paper, it was extremely difficult for firms to assess its potential impact. CP 13/1 suggests that the 'FCA prudential fee' will be calculated as follows: "*[p]eriodic fees payable under fee-blocks A.2 and A.7 to A.19 ... multiplied by rate £0.084*". This could have a significant impact on some firms, but it is only in CP 13/1 (with the inclusion of an indicative fee rate) that this has become apparent. We are also, as discussed in detail above, concerned that this rate is still subject to change and that the final rate set at the FCA Board meeting will be neither subject to consultation nor required to fall within a set of agreed parameters.
20. More fundamentally, we are concerned that using a single fee rate for the FCA prudential fee-block, which applies regardless of the type of firm concerned, is potentially unfair. We appreciate that it may well be too late to amend the basis on which the FCA prudential fee is calculated for 2013/14 but going forwards we think it is important for the FCA to take account of a firm's risk categorisation and profile, and level of prudential supervision required, when determining the FCA prudential fee payable.
21. A firm's risk profile will affect significantly the degree of prudential supervision required. For example, a full scope BIPRU firm has a very different risk profile to that of a BIPRU limited licence or CAD exempt firm and therefore by extension, the level of regulatory supervision required is very different. In addition, the FCA places firms into risk categories after FCA assessments (e.g. ARROW or other such visits) and we consider that such risk categories could also play a role in the determination of FCA prudential fees. We strongly consider that the FCA prudential fee should be aligned with a firm's risk profile and the degree of prudential supervision required. We would welcome the chance to explore this approach with the FCA as part of the fees review.
22. As a final illustration of our concerns, we set out below a hypothetical example demonstrating the hugely significant impact which the new 'FCA Prudential fee', when combined with the change to the tariff base for fee-blocks A.12, A.13 and A.14, could



have on an Intermediary Firm. It is, we think, unacceptable for some firms to be subject to an almost 600 per cent. increase in FCA fees over such a short space of time.

Example: Intermediary Firm in fee-block A.13 that has an annual income of £10 million and 10 CF30 Approved Persons

Fees payable in 2012/13	Fees payable in 2013/14 (based on latest indicative fee rates)
	Fees payable in respect of fee-block A.13: £63,400
	Fees payable in respect of FCA prudential fee-block: £5,326
Total: £11,915	Total: £68,726 (c. 580 per cent. increase in total fees)

23. We look forward to discussing these, and other, issues with the FCA during the fees review.