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25 May 2011

## FSCS OPEN LETTER – FSCS INTERIM LEVY – TARIFF ISSUES

We refer to our previous open letter sent jointly with the Financial Services Authority (FSA) published on 25 February 2011 (**Open Letter**).

### Purpose of this letter

Following the interim levy invoices in January 2011, we have received, from a number of firms in both the Investment Fund Management (SD01) and Investment Intermediation (SD02) sub-classes, requests to resubmit the tariff data previously submitted to the FSA and thereby obtain a reduction or remission of the levy under the relieving provisions at 2.3R of the FSA's FEES rules. The purpose of this letter is to explain the likely timing for FSCS to determine whether or not to agree to remit or refund a levy where, in the exceptional circumstances of a specific case, FSCS considers that payment of the full FSCS levy would be inequitable.

The rationale for raising the interim levy and the details of how the levies are allocated were set out in full in the Open Letter.

FSCS understands that its decision in relation to these requests may have a significant impact on firms, including those who have not made any request, and that all firms wish to be informed of the position as soon as possible. Whilst we are endeavouring to deal with the requests as soon as practicable, firms will appreciate that FSCS must deal with the requests by a process which is fair, consistent and in accordance with the FEES rules. The large number of requests means that this may take longer than firms would like, but we can reassure firms that this matter is receiving detailed and urgent attention.

Firms should note that, under the FEES rules, it is for FSCS to decide how to exercise the discretion whether or not to accede to a firm's request for a reduction or remission of the levy. FSCS will make its decisions to achieve fairness between its levy payers; in particular, FSCS will have regard to the fact that any decision to allow a reduction or remission of the levy of one firm will have a knock-on effect on the other levy payers within the same funding class. This means, among other things, that FSCS cannot simply allow all claims for rebates regardless of their merits, but must consider each claim in the light of the rules.

### Requirement to pay interim levy invoices

We reiterate that, notwithstanding that firms may have submitted a request to obtain a reduction or remission of the FSCS levy, all firms with levy invoices should now have made payment to FSCS/FSA in accordance with the FEES rules and invoice terms, ie within 30 days. For most firms, this means payment was due on 23 February 2011 irrespective of any request to revise tariff data. We thank all those firms who have allowed us to compensate claimants by paying their levy in a timely manner. The small number of firms who have not paid their levy should note that failure to make payment by the applicable due date will have triggered the "late payment" provision of the FSA's FEES rules (at FEES 2.2.1R), which includes interest "*on any unpaid part of the fee at the rate of 5% per annum above the Bank of England's repo rate from time to time in force, accruing on a daily basis from the date on which the amount concerned became due*". FSCS will charge non-paying firms with interest at the rate set out at FEES 2.2.1R on the original invoiced levy amount, irrespective of whether FSCS ultimately agrees to a firm's request for a reduction or remission of the FSCS levy.

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## **Requests for a reduction or remission of the FSCS levy**

Under the FSA's FEES rules, firms may apply for a reduction or remission of the levy, subject to a time limit. As explained in the Open Letter, to ensure consistent treatment of all firms, we proposed that all such requests (which are primarily based on requests to resubmit tariff data) would be considered together. To facilitate that process, and to ease the administrative burden on all concerned, we asked firms to submit their requests by 31 March 2011, which requests would be handled in the first (and maybe only) batch.

FSCS (working closely with the FSA) is now considering each request. Each request will be considered on its own merits, but FSCS will seek to apply a consistent approach to requests of a similar nature. We have started the review of the requests on this basis.

In considering requests, as required under the FSA's FEES rules (at FEES 2.3R), FSCS must determine whether, in the exceptional circumstances of a particular case, the payment of the FSCS levy would be inequitable. In doing so, FSCS must have regard to the guidance at FEES 2.3.2A, which states that a poor estimate by the levy payer, when providing the tariff data, is unlikely, of itself, to amount to an exceptional circumstance. By contrast, a mistake of fact or law may give rise to such a claim. By way of an indicative view at this stage, where a firm decided to submit its income on a "gross" basis, FSCS is not currently inclined to consider that to be a good reason now to invoke the relieving provisions at FEES 2.3R. As the changes to the tariff measures for the 2009/2010 levy period<sup>1</sup> were discussed in FSA's Consultation Papers 07/5 and 08/8, and finalised in the FSA's Policy Statement 08/11, as well as having been discussed within the industry more widely, firms can be expected to have known and prepared for any implications for their business.

## **Timing of FSCS decisions and Impact on levy payer**

FSCS expects to be in a position to begin to communicate decisions on individual cases during the course of June 2011. This is to allow all requests to be determined at about the same time and on a consistent basis. However, FSCS does not expect to be in a position then to communicate the financial impact on individual firms of any decisions (ie whether any remission or rebate will be due or any further levy payable) as FSCS will need sufficient time to enable it to ascertain what amount: (i) may be refunded to firms, (ii) may be retained against further levy costs, or (iii) needs to be raised by additional levies. This calculation will reflect any revised tariff data on which the levy is calculated, but also the actual amount spent to fund the costs of compensation to 30 June 2011 and any recoveries relating to compensation claims paid in respect of SD02 defaults during the 2010/2011 levy year. In that context, FSCS will need to consider the position of all firms, as those who did not resubmit tariff data may be affected if as a result of the process, their share of the levy cost is adjusted. Accordingly, FSCS intends to issue a further update to the industry in July 2011 setting out the financial impact on individual firms of its decisions.

If a firm's share of the levy is recalculated, a credit note or additional invoice may be issued depending on the outcome of the overall compensation costs assessment carried out by FSCS as at the end of June. Where the firm has a credit balance, a refund may be made, or the amount set against the 2011/2012 levy, depending on the expected levy requirements for each of the SD01 and SD02 sub-classes for the 2011/2012 levy year. As recently announced, there is no levy anticipated in 2011/12 for the SD01 sub class at present, so we anticipate that these firms will receive a refund (if any amount is due). We may need to raise additional levies on other firms before refunds can be paid.

For completeness, any request not in the form requested at paragraph 20 of the Open Letter or which fails to provide sufficient information to enable a decision to be made by FSCS will be rejected, and the firm will be required to resubmit the request, to which the 2 year deadline set out in the FSA's FEES rules may apply.

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<sup>1</sup> For the year end preceding 31 December 2009. For a firm with a 31 March 2009 year end, this would be 31 March 2009. For a firm with a 31 December 2009 year end, this would be 31 December 2009.

## **The Annual Levy for the 2011/2012 levy period**

As firms will be aware, the proposed levy was set out in the most recent edition of FSCS's Outlook which was published in April 2011.

FSCS intend to levy firms in the Investment Class on the basis of the income figure that they reported to the FSA at the year end for levies in the 2011/2012 period. Firms should note that the calculation of the annual levy will be carried out independently from the work being done in respect of the interim levy, particularly as a result of the requests from firms seeking a reduction or remission of the interim levy. This latter work will remain a separate exercise for the sake of clarity for all parties.

Firms should also note that, given that the date by which firms are required to have reported their tariff data in respect of the 2011/2012 annual levy to FSA/FSCS under FEES 6.5.13R has now passed (ie, by the end of February 2011), firms wishing to resubmit their tariff data on a different basis, after the due date, will need to make a request to FSCS for a reduction or remission of the annual levy in accordance with FEES 2.3.1R. FSCS will then apply the same considerations to such requests as it is presently applying to those firms seeking a reduction or remission of the interim levy.

Yours faithfully



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