

# Chapter 11

## Controllers and close links



## 11.1 Application

### Application to firms

11.1.1

**R**

This chapter applies to every *firm* except:

- (1) an *ICVC*;
- (2) [deleted]
- (3) [deleted]
- (4) [deleted]
- (5) a *sole trader*;
- (6) [deleted]
- (7) a *UK ISPV*;

a *firm* which only has *permission* for *administering a benchmark*, as set out in the table in ■ SUP 11.1.2 R.

11.1.2

**R**

Applicable sections (see ■ SUP 11.1.1 R)

	Category of firm	Applicable sections
(1)	A <i>UK domestic firm other than a building society, a non-directive friendly society, a non-directive firmor</i> (in the case of an <i>FCA-authorized person</i> ) a <i>firm</i> with only a <i>limited permission</i>	All except SUP 11.3, SUP 11.4.2A R and SUP 11.4.4 R
(1A)	A <i>building society</i>	(a) In the case of an exempt change in control (see Note), SUP 11.1, SUP 11.2 and SUP 11.9 (b) In any other case, all except SUP 11.3 and SUP 11.4.4 R
(2)	A <i>non-directive friendly society</i>	SUP 11.1, SUP 11.2, and SUP 11.9
(2A)	A <i>non-directive firm</i>	all except SUP 11.3, SUP 11.4.2 R, and SUP 11.4.4 R
(2B)	(In the case of an <i>FCA-authorized person</i> ) a <i>firm</i> with only a <i>limited permission</i>	All except SUP 11.3, SUP 11.4.2 R, and SUP 11.4.4 R

	Category of firm	Applicable sections
(3)	An overseas firm	All except SUP 11.3, SUP 11.4.2 R, SUP 11.4.2A R, , SUP 11.4.9 G, SUP 11.5.8 G to SUP 11.5.10 G, SUP 11.6.2 R, SUP 11.6.3 R, , SUP 11.7
Note	In row (1A), a change in <i>control</i> is exempt if the <i>controller</i> or proposed <i>controller</i> is exempt from any obligation to notify the <i>appropriate regulator</i> under Part XII of the Act (Control Over Authorised Persons) because of The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774). (See SUP 11.3.2A G).	

**Application to controllers**

11.1.4

D

■ SUP 11.1, ■ SUP 11.2.1 G, ■ SUP 11.3 and ■ SUP 11.7 apply to a *controller* or a proposed *controller* of a *UK domestic firm* not listed in ■ SUP 11.1.1 R (1) to ■ SUP 11.1.1R(8).



## 11.2 Purpose

- 11.2.1** G Part XII of the Act (Control Over Authorised Persons) places an obligation on the *controllers* and proposed *controllers* of those *UK domestic firms* not listed in ■ SUP 11.1.1 R (1) to ■ SUP 11.1.1R(8) to notify the *appropriate regulator* of changes in *control*, including acquiring, increasing or reducing *control* or ceasing to have *control* over a *firm*. Furthermore, those *persons* are required to obtain the *appropriate regulator's* approval before becoming a *controller* or increasing their *control* over a *firm*. ■ SUP 11.3 is intended to assist those *persons* in complying with their obligations under Part XII of the Act.
- 11.2.2** G The *rules* in ■ SUP 11.4 to ■ SUP 11.6 are aimed at ensuring that the *appropriate regulator* receives the information that it needs to fulfil its responsibility to monitor and, in some cases, give prior approval to *firms' controllers*.
- 11.2.2A** G [deleted]
- 11.2.3** G As the approval of the *appropriate regulator* is not required under the Act for a new *controller* of an *overseas firm*, the *notification rules* on such *firms* are less prescriptive than they are for *UK domestic firms*. Nevertheless, the *appropriate regulator* still needs to monitor such an *overseas firm's* continuing satisfaction of the *threshold conditions*, which normally includes consideration of a *firm's* connection with any *person*, including its *controllers* and *parent undertakings* (see the *threshold conditions* set out in paragraphs 3B, 4F and 5F of Schedule 6 to the Act). The *appropriate regulator* therefore needs to be notified of *controllers* and *parent undertakings* of *overseas firms*.
- 11.2.4** G As part of the *appropriate regulator's* function of monitoring a *firm's* continuing satisfaction of the *threshold conditions*, the *appropriate regulator* needs to consider the impact of any significant change in the circumstances of one or more of its *controllers*, for example, in their financial standing and, in respect of corporate *controllers*, in their *governing bodies*. Consequently, the *appropriate regulator* needs to know if there are any such changes. ■ SUP 11.8 therefore requires a *firm* to tell the *appropriate regulator* if it becomes aware of particular matters relating to a *controller*.
- 11.2.5** G Similarly, the *appropriate regulator* needs to monitor a *firm's* continuing satisfaction of the *threshold conditions* set out in paragraphs 3B, 4F and 5F of Schedule 6 to the Act (as applicable) (in relation to *threshold conditions*

for which the *FCA* is responsible, see ■ COND 2.3), which requires that a *firm's close links* are not likely to prevent the *appropriate regulator's* effective supervision of that *firm*. Accordingly the *appropriate regulator* needs to be notified of any changes in a *firm's close links*. This requirement is contained in ■ SUP 11.9.

11.2.6 **G** Every *firm*, other than a *firm* listed in ■ SUP 11.1.1 R (1) to ■ SUP 11.1.1R(8) or a *firm* excluded from the operation of ■ SUP 16.4 or ■ SUP 16.5 by ■ SUP 16.1.3 R, is required to submit an annual report on its *controllers* and *close links* as set out in ■ SUP 16.4 and ■ SUP 16.5.

11.2.7 **G** The requirements in ■ SUP 11 implemented certain provisions relating to changes in *control* and *close links* which were required under the *Single Market Directives*.

11.2.8 **G** An event described in ■ SUP 11.4.2R, ■ SUP 11.4.2A R and ■ SUP 11.4.4Ris referred to in this chapter as a "change in *control*".



### 11.3 Requirements on controllers or proposed controllers under the Act

**11.3.1** G The notification requirements are set out in sections 178, 179, 191D and 191E of the Act and holdings which may be disregarded are set out in section 184 of the Act. A summary of the notification requirements described in this section is given in ■ SUP 11 Annex 1.

**11.3.1A** G For the purposes of Part XII (Control over authorised persons) of the Act, and in particular, calculations relating to the holding of shares and/or voting power, the definitions of “shares” and “voting power” are set out in section 191G of the Act.

**11.3.1B** G ■ SUP 11 Annex 6G provides *guidance* on when one *person's* holding of *shares* or *voting power* must be aggregated with that of another *person* for the purpose of determining whether an acquisition or increase of control will take place as contemplated by section 181 or 182 of the Act such that notice must be given to the *appropriate regulator* in accordance with section 178 of the Act before making the acquisition or increase. This will be:

- (1) where those *persons* are acting in concert, as contemplated by section 178(2) (Obligation to notify appropriate regulator: acquisitions of control) of the Act; or
- (2) in the case of voting power only, if any of the circumstances described in section 422(5) (Controller) of the Act apply.

**Requirement to notify a proposed change in control**.....

**11.3.2** G Sections 178(1) and 191D(1) of the Act require a *person* (whether or not he is an *authorised person*) to notify the *appropriate regulator* in writing if he decides to acquire, increase or reduce *control* or to cease to have *control* over a *UK domestic firm* . Failure to notify is an offence under section 191F of the Act (Offences under this Part).

**11.3.2A** G The Treasury have made the following exemptions from the obligations under section 178 of the Act:

- (1) *controllers* and potential *controllers* of *non-directive friendly societies* are exempt from the obligation to notify a change in *control* (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774));

- (2) *controllers and potential controllers of building societies* are exempt from the obligation to notify a change in *control* unless the change involves the acquisition of a holding of a specified percentage of a *building society's* capital or the increase or reduction by a specified percentage of a holding of a *building society's* capital (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774.)). The "capital" of a *building society* for these purposes consists of:
  - (a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 which have been issued by the society (in practice, likely to be permanent interest bearing shares (PIBS)); and
  - (b) the general reserves of that *building society*;
- (3) *potential controllers of non-directive firms* (other than, in the case of an *FCA-authorised person, firms with only a limited permission*) ("A") are exempt from the obligation to notify a change in *control* unless the change results in the potential *controller* holding:
  - (a) 20% or more of the *shares* in A or in a *parent undertaking* of A ("P");
  - (b) 20% or more of the *voting power* in A or P; or
  - (c) *shares or voting power* in A or P as a result of which the *controller* is able to exercise significant influence over the management of A;

or where the change in *control* over A would lead to the *controller* ceasing to fall into any of the cases (a), (b) or (c) above (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774)).
- (4) (in the case of a change in *control* over an *FCA-authorised person*) *potential controllers of firms with only a limited permission* ("A") are exempt from the obligation to notify a change in *control*, unless the change would result in the potential *controller* holding:
  - (a) 33% or more of the *shares* in A or in a *parent undertaking* of A ("P"); or
  - (b) 33% or more of the *voting power* in A or P; or
  - (c) *shares or voting power* in A or P as a result of which the *controller* is able to exercise significant influence over the management of A;

or where the change in *control* over A would lead to the *controller* ceasing to fall into any of the cases (a), (b) or (c) above (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774)).

11.3.3 G [deleted]

**Approval required before acquiring or increasing control**

11.3.4 G If a *person* decides to acquire *control* or increase *control* over a *UK domestic firm* in a way described in ■ SUP 11.4.2 Ror acquire *control* in a way described in ■ SUP 11.4.2AR (1), he must obtain the *appropriate regulator's* approval

before doing so. Making an acquisition before the *appropriate regulator* has approved of it is an offence under section 191F of the *Act* (Offences under this Part).

- 11.3.5 **G** The *appropriate regulator's* approval is not required before a *controller* reduces *control* or ceases to have *control* over a *UK domestic firm*.

**Pre-notification and approval for fund managers**

- 11.3.5A **G** The *appropriate regulator* recognises that *firms* acting as *investment managers* may have difficulties in complying with the prior notification requirements in sections 178 and 191D of the *Act* as a result of acquiring or disposing of listed *shares* in the course of that fund management activity. To ameliorate these difficulties, the *appropriate regulator* may accept pre-notification of proposed changes in *control*, made in accordance with **■ SUP D**, and may grant approval of such changes for a period lasting up to a year.

- 11.3.5B **D** The *appropriate regulator* may treat as notice given in accordance with sections 178 and 191D of the *Act* a written notification from a *firm* which contains the following statements:

- (1) that the *firm* proposes to acquire and/or dispose of *control*, on one or more occasions, of any *UK domestic firm* whose *shares* or those of its ultimate *parent undertaking* are, at the time of the acquisition or disposal of *control*, listed, or which are traded or admitted to trading on a *MTF* or a market operated by a *ROIE*;
- (2) that any such acquisitions and/or disposals of *control* will occur only in the course of the *firm's* business as an *investment manager*;
- (3) that the level of *control* the *firm* so acquires in the pre-approval period will at all times remain less than 20%; and
- (4) that the *firm* will not exercise any influence over the *UK domestic firm* in which the shares are held, other than by exercising its voting rights as a shareholder or by exercising influence intended to promote generally accepted principles of good corporate governance.

- 11.3.5C **G** Where the *appropriate regulator* approves changes in *control* proposed in a notice given under **■ SUP 11.3.5B D**:

- (1) the *controller* remains subject to the requirement to notify the *appropriate regulator* when a change in *control* actually occurs; and
- (2) the notification of change in *control* should be made no later than five *business days* after the end of each *month* and set out all changes in the *controller's* control position for each *UK domestic firm* for the *month* in question.

At that stage, the *appropriate regulator* may seek from the *controller* further information.



11.3.6 **G** [deleted]

11.3.6A **G** [deleted]

11.3.6B **G** [deleted]

11.3.6C **G** [deleted]

**Forms of notifications when acquiring or increasing control**

11.3.7 **D** A *section 178 notice* given to the *appropriate regulator* by a person who is acquiring *control* or increasing his *control* over a UK domestic firm, in a way described in ■ SUP 11.4.2 R (1) to (4), or acquiring *control* in a way described in ■ SUP 11.4.2A R, must contain the information and be accompanied by such documents as are required by the controllers form approved by the *appropriate regulator* for the relevant application.

11.3.7A **G** The *controllers forms* approved by the *appropriate regulator* may be found at the *appropriate regulator's website* [www.fca.org.uk/firms/change-control](http://www.fca.org.uk/firms/change-control)

11.3.8 **D** [deleted]

11.3.9 **D** [deleted]

11.3.10 **D**

- (1) A person who has submitted a *section 178 notice* under ■ SUP 11.3.7 D must notify the *appropriate regulator* immediately if he becomes aware, or has information that reasonably suggests, that he has or may have provided the *appropriate regulator* with information which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed, in a material particular. The notification must include:
  - (a) details of the information which is or may be false, misleading, incomplete or inaccurate, or has or may have changed;
  - (b) an explanation why such information was or may have been provided; and
  - (c) the correct information.
- (2) If the information in (1) (c) cannot be submitted with the *section 178 notice* (because it is not immediately available), it must instead be submitted as soon as possible afterwards.
- (3) The requirement in (1) ceases if the change in *control* occurs or will not take place.

11.3.11 **G** The *appropriate regulator* will inform a *section 178 notice* giver as soon as reasonably practicable if it considers the *section 178 notice* to be incomplete.

11.3.12 **G** The *appropriate regulator* has power, under section 179(3) of the Act (Requirements for section 178 notices), to vary or waive these requirements in relation to a *section 178 notice* in particular cases if it considers it appropriate to do so.

11.3.13 **G** Where a *controller* or proposed *controller* which is an *authorised person* is required to submit less information under **SUP 11.3.7 D** than other *persons*, the *appropriate regulator* may ask for confirmation of details already held by it or any additional information required under **SUP 11.5.1R**.

11.3.14 **G** [deleted]

**Notification when reducing control**

11.3.15 **G** [deleted]

11.3.15A **D** A notice given to the *appropriate regulator* by a *person* who is reducing or ceasing to have *control* over a *UK domestic firm*, as set out in **SUP 11.4.2R** or **SUP 11.4.2A R** must:

- (1) be in writing; and
- (2) provide details of the extent of *control* (if any) which the *controller* will have following the change in *control*.

11.3.16 **G** [deleted]

**Joint notifications**

11.3.17 **G** Notifications to the *appropriate regulator* by proposed *controllers* and *controllers* under Part XII of the Act may be made on a joint basis outlined in **SUP 11.5.8 G** to **SUP 11.5.10 G**.



## 11.4 Requirements on firms

11.4.1 **G** A summary of the notification requirements in this section is given in **■** SUP 11 Annex 1.

### Requirement to notify a change in control

11.4.2 **R** A *UK domestic firm*, other than a *non-directive firm*, must notify the *appropriate regulator* of any of the following events concerning the *firm*:

- (1) a *person* acquiring *control*;
- (2) an existing *controller* increasing *control*;
- (3) an existing *controller* reducing *control*;
- (4) an existing *controller* ceasing to have *control*.

11.4.2A **R** A *non-directive firm* (including, in the case of an *FCA-authorised person*, a *firm* with only a *limited permission*) must notify the *appropriate regulator* of any of the following events concerning the *firm*:

- (1) a *person* becoming *controller* of the *firm*; or
- (2) an existing *controller* ceasing to be *controller* of the *firm*.

11.4.3 **G** [deleted]

11.4.4 **R** An *overseas firm* must notify the *appropriate regulator* if a *person* becomes a *controller* of the *firm*, increases or reduces *control* over the *firm* or ceases to have *control* over the *firm*

11.4.5 **G** [deleted]

### Content and timing of the notification

11.4.7 **R** The notification by a *firm* under **■** SUP 11.4.2 R, **■** SUP 11.4.2A R or **■** SUP 11.4.4 R must:

- (1) be in writing;
- (2) contain the information set out in:

- (a) in the case of acquiring or increasing *control*, ■ SUP 11.5.1 R (subject to ■ SUP 11.5); or
  - (b) in the case of reducing *control*, ■ SUP 11.5.7 R; and
- (3) be made:
- (a) as soon as the *firm* becomes aware that a *person* , whether alone or acting in concert, has decided to acquire *control* or to increase or reduce *control*; or
  - (b) if the change in *control* takes place without the knowledge of the *firm*, within 14 *days* of the *firm* becoming aware of the change in *control* concerned.

**11.4.8** G *Principle 11* requires *firms* to be open and cooperative with the *appropriate regulator*. A *firm* should discuss with the *appropriate regulator*, at the earliest opportunity, any prospective changes of which it is aware, in a *controller's* or proposed *controller's* shareholdings or *voting power* (if the change is material). These discussions may take place before the formal notification requirement in ■ SUP 11.4.2 R or ■ SUP 11.4.4 R arises. (See also ■ SUP 11.3.2 G). As a minimum, the *appropriate regulator* considers that such discussions should take place before a *person*:

- (1) enters into any formal agreement in respect of the purchase of shares or a proposed acquisition or merger which would result in a change in *control* (whether or not the agreement is conditional upon any matter, including the *appropriate regulator's* approval); or
- (2) purchases any *share options*, *warrants* or other financial instruments, the exercise of which would result in the *person* acquiring *control* or any other change in *control*.

**11.4.9** G The obligations in ■ SUP 11.4.2 R and ■ SUP 11.4.2A R apply whether or not the *controller* himself has given or intends to give a notification, in accordance with his obligations under the *Act*.

**Identity of controllers**.....

**11.4.10** R A *firm* must take reasonable steps to keep itself informed about the identity of its *controllers*.

**11.4.11** G The steps that the *appropriate regulator* expects a *firm* to take to comply with ■ SUP 11.4.10 R include, if applicable:

- (1) monitoring its register of shareholders (or equivalent);
- (2) monitoring notifications to the *firm* in accordance with Part 22 of the Companies Act 2006;
- (3) monitoring public announcements made under the relevant disclosure provisions of the *Takeover Code* or other rules made by the *Takeover Panel*;

- 
- (4) monitoring the entitlement of delegates, or *persons* with voting rights in respect of group insurance contracts, to exercise or control *voting power* at general meetings.



## 11.5 Notifications by firms

11.5.1 **R** Information to be submitted by the *firm* (see ■ SUP 11.4.7 R(2)(a))

(1)	The name of the <i>firm</i> ;
(2)	the name of the <i>controller</i> or proposed <i>controller</i> and, if it is a <i>body corporate</i> and is not an <i>authorised person</i> , the names of its <i>directors</i> and its <i>controllers</i> ;
(3)	a description of the proposed event including the shareholding and <i>voting power</i> of the <i>person</i> concerned, both before and after the change in control; and
(4)	any other information of which the <i>appropriate regulator</i> would reasonably expect notice.

11.5.2 **R** The notification from a *firm* under ■ SUP 11.4.7 R(2)(a) need only contain as much of the information set out in ■ SUP 11.5.1 R as the *firm* is able to provide, having made reasonable enquiries from *persons* and other sources as appropriate.

11.5.3 **G** [deleted]

11.5.4 **G** *Firms* are reminded that a change in *control* may give rise to a change in the *group companies* to which the *appropriate regulator's* consolidated financial supervision requirements apply. Also, the *firm* may for the first time become subject to the *appropriate regulator's* requirements on consolidated financial supervision. This may apply, for example, if the *controller* is itself an *authorised undertaking*. The *appropriate regulator* may therefore request such a *firm*, *controller* or proposed *controller* to provide evidence that, following the change in *control*, the *firm* will meet the requirements of these *rules*, if appropriate.

11.5.4A **G** *Firms* are also reminded that a change in *control* may give rise to a notification as a *financial conglomerate* or a change in the supplementary supervision of a *financial conglomerate* (see ■ GENPRU 3.1(Cross sector groups) and ■ GENPRU 3.2(Third country groups)).

11.5.5 **G** [deleted]

11.5.6 **G** [deleted]

**Form of notification when a person reduces control**

11.5.7

**R**

A notification of a proposed reduction in *control* must:

- (1) give the name of the *controller*; and
- (2) provide details of the extent of *control* (if any) which the *controller* will have following the change in *control*.

**Joint notifications**

11.5.8

**G**

A *firm* and its *controller* or proposed *controller* may discharge an obligation to notify the *appropriate regulator* by submitting a single joint *section 178 notice* containing the information required from the *firm* and the *controller* or proposed *controller*. In this case, the *section 178 notice* may be used on behalf of both the *firm* and the *controller* or proposed *controller*.

11.5.9

**G**

If a *person* is proposing a change in *control* over more than one *firm* within a *group*, then the *controller* or proposed *controller* may submit a single *section 178 notice* to the *PRA* in respect of all those *firms* which are *PRA-authorised persons* and a single *section 178 notice* to the *FCA* in respect of all those *firms* which are not *PRA-authorised persons*. The *section 178 notice* should contain all the required information as if separate notifications had been made, but information and documentation need not be duplicated within the set of information sent to each regulator.

11.5.10

**G**

When an event occurs (for example, a *group* restructuring or a merger) as a result of which:

- (1) more than one *firm* in a *group* would undergo a change in *control*; or
- (2) a single *firm* would experience more than one change in *control*;

then, to avoid duplication of documentation, all the *firms* and their *controllers* or proposed *controllers* may discharge their respective obligations to notify the *appropriate regulator* by submitting a single *section 178 notice* to the *PRA* containing one set of information in relation to all the *firms* which are *PRA-authorised persons* and a single *section 178 notice* to the *FCA* containing one set of information in relation to all the *firms* which are not *PRA-authorised persons*.



## 11.6 Subsequent notification requirements by firms

### Changes in the information provided to the appropriate regulator

**11.6.1** **G** *Firms* are reminded that **■** SUP 15.6.4 R requires them to notify the *appropriate regulator* if information notified under **■** SUP 11.4.2 R, **■** SUP 11.4.2A R or **■** SUP 11.4.4 R was false, misleading, inaccurate, incomplete, or changes, in a material particular. This would include a *firm* becoming aware of information that it would have been required to provide under **■** SUP 11.5.1 R if it had been aware of it.

**11.6.2** **R** After submitting a *section 178 notice* under **■** SUP 11.4.2 R or **■** SUP 11.4.2A R and until the change in *control* occurs (or is no longer to take place), **■** SUP 15.6.4 R and **■** SUP 15.6.5 R apply to a *UK domestic firm* in relation to any information its *controller* or proposed *controller* provided to the *appropriate regulator* under **■** SUP 11.5.1 R or **■** SUP 11.3.7 D.

**11.6.3** **R** During the period in **■** SUP 11.6.2 R, a *UK domestic firm* must take reasonable steps to keep itself informed about the circumstances of the *controller* or the proposed *controller* to which the notification related.

### Notification that the change in control has taken place

**11.6.4** **R** A *firm* must notify the *appropriate regulator*:

- (1) when a change in *control* which was previously notified under **■** SUP 11.4.2 R, **■** SUP 11.4.2A R or **■** SUP 11.4.4 R has taken place; or
- (2) if the *firm* has grounds for reasonably believing that the event will not now take place.

**11.6.5** **R** The notification under **■** SUP 11.6.4 R must be given within 14 days of the change in *control* or of having the grounds (as applicable).

**11.6.6** **G** [deleted]





## 11.7 Acquisition or increase of control: assessment process and criteria

- 11.7.1 G The assessment process and the assessment criteria are set out in sections 185 to 191 of the *Act*.
  
- 11.7.2 G Section 191A deals with the procedure the *appropriate regulator* must follow where the *appropriate regulator* reasonably believes that:
  - (1) there has been a failure to give notice under section 178(1) of the *Act* in circumstances where notice was required;
  - (2) there has been a breach of a condition imposed under section 187 of the *Act*; or
  - (3) there are grounds for objecting to control on the basis of the matters in section 186 of the *Act*.
  
- 11.7.3 G The *appropriate regulator* may serve *restriction notices* in certain circumstances in accordance with section 191B of the *Act*.
  
- 11.7.4 G The *appropriate regulator* may apply to the court for an order for the sale of *shares* in accordance with section 191C of the *Act*.
  
- 11.7.5 G [deleted]
  
- 11.7.6 G [deleted]
  
- 11.7.7 G [deleted]
  
- 11.7.8 G [deleted]
  
- 11.7.9 G [deleted]
  
- 11.7.10 G [deleted]
  
- 11.7.11 G [deleted]

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- 11.7.12 G [deleted]
  
  - 11.7.13 G Before making a determination under section 185 or giving a *warning notice* under section 191A, the *appropriate regulator* must comply with the requirements as to consultation with the other regulator set out in sections 187A, 187B and 191A of the *Act*, as applicable.
  
  - 11.7.14 G [deleted]
  
  - 11.7.15 G [deleted]
  
  - 11.7.16 G [deleted]
  
  - 11.7.17 G [deleted]
  
  - 11.7.18 G [deleted]



## 11.8 Changes in the circumstances of existing controllers

**11.8.1** **R** A *firm* must notify the *appropriate regulator* immediately it becomes aware of any of the following matters in respect of one or more of its *controllers*:

- (1) if a *controller*, or any entity subject to his *control*, is or has been the subject of any legal action or investigation which might put into question the integrity of the *controller*;
- (2) if there is a significant deterioration in the financial position of a *controller*;
- (3) if a corporate *controller* undergoes a substantial change or series of changes in its *governing body*.
- (4) [deleted]

**11.8.2** **G** In assessing whether a matter should be notified to the *appropriate regulator* under ■ SUP 11.8.1 R (1), ■ SUP 11.8.1 R (2) or ■ SUP 11.8.1 R (3), a *firm* should have regard to the *guidance* on satisfying the *threshold conditions* set out in paragraphs 2E and 3D of Schedule 6 to the *Act* contained in ■ COND 2.5.

**11.8.3** **G** In respect of ■ SUP 11.8.1 R (3), the *appropriate regulator* considers that, in particular, the removal or replacement of a majority of the members of a *governing body* (in a single event or a series of connected events) is a substantial change and should be notified.

**11.8.4** **G** If a matter has already been notified to the *appropriate regulator* (for example, as part of the *firm's* application for a *Part 4A permission*), the *firm* need only inform the *appropriate regulator* of any significant developments.

**11.8.5** **G** The level of a *firm's* awareness of its *controller's* circumstances will depend on its relationship with that *controller*. The *appropriate regulator* does not expect *firms* to implement systems or procedures so as to be certain of any changes in its *controllers'* circumstances. However, the *appropriate regulator* does expect *firms* to notify it of such matters if the *firm* becomes aware of them, and it expects *firms* to make enquiries of its *controllers* if it becomes aware that one of the events in ■ SUP 11.8.1 R may occur or has occurred.

11.8.6

G

The *appropriate regulator* may ask the *firm* for additional information following a notification under ■ SUP 11.8.1 R in order to satisfy itself that the *controller* continues to be suitable (see ■ SUP 2: Information gathering by the FCA or PRA on its own initiative).



## 11.9 Changes in close links

### Requirement to notify changes in close links

- 11.9.1 **R** (1) [deleted]  
 (2) [deleted]
- 11.9.1A **R** (1) A *firm* must notify the *FCA* that it has become or ceased to be *closely linked* with any *person* and ensure the following:  
 (a) where a *firm* has elected to report changes in *close links* on a *monthly* basis under ■ SUP 11.9.5A R, the notification must be made in line with ■ SUP 11.9.3BA R; and  
 (b) in any other case, the notification must be made by completing the Close Links Notification Form (see ■ SUP 11.9.3B G) and must include the information in ■ SUP 11.9.3D G.  
 (2) If a *group* includes more than one *firm*, a single close links notification may be made by completing the Close Links Notification Form or the Close Links Monthly Report (as applicable) and so satisfy the notification requirement for all *firms* in the *group*. Nevertheless, the requirement to notify, and the responsibility for notifying, remains with each *firm* in the *group*.
- 11.9.1B **R**
- 11.9.2 **G** Guidance on what constitutes a *close link* is provided in ■ COND 2.3.
- 11.9.2A **G** A *firm* may elect not to include the following *close links* in the notification submitted under ■ SUP 11.9.1A R, ■ SUP 11.9.1B R, ■ SUP 11.9.5A R, ■ SUP 11.9.5B R or ■ SUP 16.5:  
 (1) *shares* held in its capacity as custodian provided it can only exercise any voting rights attached to such *shares* under instructions given in writing or by *electronic means*;  
 (2) *shares* held in its capacity as collateral taker under a collateral transaction which involves the outright transfer of *securities* provided it does not declare any intention of exercising (and does not exercise) the voting rights attaching to such *shares*.

- 11.9.3 G [deleted]
- 11.9.3-A G The *FCA* may ask the *firm* for additional information following a notification under ■ SUP 11.9.1A R in order to satisfy itself that the *firm* continues to satisfy the *threshold conditions* (see ■ SUP 2: Information gathering by the *FCA* and *PRA* on their own initiative).

11.9.3-B G

**Form of notification and method of submission**

11.9.3A G [deleted]

11.9.3B G The Close Links Notification Form approved by the *FCA* for notifications under ■ SUP 11.9.1A R, ■ SUP 11.9.5A R may be found at the *FCA* website. The Close Links Notification Form approved by the *FCA* for notifications under ■ SUP 11.9.1AR (1)(b) may be found at the *FCA* website.

11.9.3BA R The notification under ■ SUP 11.9.1AR (1)(a) must be made electronically by completing the Close Links Monthly Report and submitting it through the relevant platform provided by the *FCA*.

11.9.3BB R The Close Links Monthly Report must contain the information specified in ■ SUP 16 Annex 35AR.

11.9.3C G

11.9.3CA R

11.9.3CB R

- 11.9.3D G
- (1) The notification in ■ SUP 11.9.1AR (1)(b) and ■ SUP 11.9.1BR (1)(b) should contain a list of all *persons* with whom the *firm* is aware that it has *close links*, at the time the notification is made, and, for each such person, state:
    - (a) its name;
    - (b) the nature of the *close links*;
    - (c) if the *close links* are with a *body corporate*, its country of incorporation, address and registered number; and
    - (d) if the *close links* are with an individual, their date and place of birth.
  - (2) The *firm* must also submit a *group* organisation chart.

**Timing of notification requirement**

11.9.4 **R** [deleted]

11.9.4A **R** The *firm* must make a notification to the *FCA* under ■ SUP 11.9.1A R:

- (1) as soon as reasonably practicable and no later than one *month* after it becomes aware that it has become or ceased to be closely linked with any *person*; or
- (2) where a *firm* has elected to report on a *monthly* basis, within fifteen *business days* of the end of each *month* by completing the Close Links Monthly Report for that *month* and must submit the *group* organisation chart on a quarterly basis unless there have been no changes since the submission of the previous organisation chart to the *FCA*, in which case the *group* organisation chart is not required.

11.9.4B **R**

**Electing to notify changes in close links monthly**

11.9.5 **R** (1) [deleted]

(2) [deleted]

11.9.5A **R** (1) A *firm* elects to report changes in *close links* on a *monthly* basis by sending a written notice of election to the *firm's* usual supervisory contact at the *FCA*.

(2) An election to report changes in *close links* on a *monthly* basis will stand until such time as the *firm* gives its usual supervisory contact at the *FCA* at least one *month's* written notice of its intention to cease reporting changes in *close links* on a *monthly* basis.

11.9.5B **R**

11.9.6 **G** [deleted]

11.9.6A **G** The *FCA* considers that *monthly* reporting of changes in *close links* will ordinarily only be appropriate for *firms* forming part of large *groups*.

11.9.6B **G**





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## Summary of notification requirements

SUP 11 Annex 1G



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## Aggregation of holdings for the purpose of prudential assessment of controllers

### Q1: What is this guidance about?

**A:** This guidance considers when one *person's* holding of *shares* or *voting power* must be aggregated with that of another *person* for the purpose of determining whether those *persons* have decided to acquire or increase *control* over a *UK authorised person*, as contemplated by section 181 or 182 of the *Act*, such that notice must be given to the *FCA* in accordance with section 178 (Obligation to notify the Authority: acquisitions of control) of the *Act* before making the acquisition or deciding to increase their *control*.

### Q2: When are shares or voting power to be aggregated?

**A:** There are two situations which would require the holdings of two or more *persons* to be aggregated for the purpose of determining whether they are acquiring or increasing *control* within the meaning of section 181 or 182 of the *Act*. The first is where *shares* or *voting power* are held or to be held by *persons* 'acting in concert' - this is referred to in sections 178(2) and 422(3) of the *Act*. The second is where a *person* (H) is attributed with *voting power* in a *firm* through the application of any of the circumstances described in section 422(5)(a) of the *Act* (*deemed voting power*) in addition to any other *voting power* that he holds (or is deemed to hold) in that *firm*. These two situations may apply concurrently. For example, H could be acting in concert pursuant to section 178(2) of the *Act* and have *deemed voting power* under section 422(5)(a)(i) of the *Act* where H has concluded an agreement that obliges him and a third party shareholder in the *firm* to adopt, by concerted exercise of the *voting power* they hold, a lasting common policy towards the management of that *firm*.

### Acting in Concert

### Q3: What does 'acting in concert' mean for these purposes?

**A:** There is no definition of this phrase in the *Act*. The Glossary to the Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC (the 'Acquisitions Directive') published jointly by CEBS, CEIOPS and CESR (the 'Level 3 Guidelines') states that, for the purposes of the Acquisitions Directive, 'persons are "acting in concert" when each of them decides to exercise his rights linked to the *shares* he acquires in accordance with an explicit or implicit agreement made between them.' The relevant *persons* must therefore (1) hold *shares* and/or *voting power* in the *firm* or its *parent undertaking*, and (2) reach a decision to exercise the rights linked to those *shares* in accordance with an agreement (in writing or otherwise) between them.

While the rights 'linked to' *shares* for these purposes are most likely to be voting rights, *persons* may be 'acting in concert' where they decide to exercise other rights related to *shares*, either in addition to or instead of rights attached to *voting power*, in accordance with an agreement made between them. As indicated in the Level 3 Guidelines, *persons* will begin acting in concert when they take the decision to exercise their rights in accordance with an agreement between them. This decision may be taken before or after the time the relevant *persons* decide to purchase *shares* in the *firm*. The agreement need not require them always to exercise the rights attached to their respective *shares* in the same way - see, for example, the response to Question 11 in respect of passive shareholdings.

**Q4: Does section 178(2) of the Act have the effect that two or more persons who already hold shares or voting power in a firm or its parent undertaking and who subsequently decide to exercise the**

rights related to shares or voting power in accordance with an agreement between them are required to give prior notice under section 178(1) of the Act, if their aggregated holdings fall within any of the cases set out in section 181(2) of the Act or increase by any of the steps set out in section 182(2) of the Act?

A: Yes. Section 178(1) of the Act applies when a *person* 'decides to acquire or increase control over a UK authorised person...'. For the purposes of Part XII of the Act, a *person's* acquisition of control of a *firm* is determined by virtue of his holdings of *shares* or *voting power* in that *firm* or in a *parent undertaking* of that *firm*. In determining whether control has been acquired, section 178(2) of the Act requires the holdings of *shares* or *voting power* of *persons* who are acting in concert to be aggregated. As noted in the response to Question 3, *persons* begin acting in concert when they decide to exercise the rights attached to their *shares* or *voting power* in accordance with an agreement between them. Once this decision has been taken, *shares* or voting rights must be aggregated to determine whether control has been or will be acquired. The same analysis applies to increases in control and reductions in control, as set out in sections 182 and 183 of the Act, respectively. Accordingly, the requirement to aggregate holdings of *shares* and/or *voting power* under section 178(2) of the Act may apply to existing holdings, as well as to new purchases, of *shares* and/or *voting power*.

**Q5: What types of arrangement amount to acting in concert in acquiring or holding shares or voting power for the purposes of these Sections of the Act?**

A: Although the term 'acting in concert' has a potentially wide meaning, not all common actions taken by shareholders in relation to *shares* or *voting power* will require the aggregation of holdings of *shares* or *voting power* for the purposes of section 178 of the Act. In particular, there are many circumstances in which *persons*, who between them hold 10% or more of the *shares* or *voting power* in a *firm* or its *parent undertaking*, may engage in a concerted exercise of *voting power*, without this amounting to 'acting in concert' in a manner requiring aggregation of their holdings under section 178(2) of the Act. An agreement by one shareholder to vote with other shareholders on a specific issue, for example, rather than on an ongoing or sustained basis, would not generally be regarded by the FCA as acting in concert so as to require a section 178 notice to be given by that group of shareholders, even where the group collectively holds 10% or more of the *voting power* in the *firm*. However, see further on this point in the response to Question 9.

#### Deemed voting power

**Q6 : What is meant by 'deemed voting power'?**

A: *Deemed voting power* is the term used in this guidance to describe those cases set out in section 422(5)(a) of the Act in which one *person's* holding of *voting power* is attributed to another. There may be circumstances in which *deemed voting power* must be aggregated with other *voting power* for the purposes of determining whether section 181(2)(b) of the Act applies, but the cases set out in section 422(5)(a) may result in the attribution of *voting power* to a *person* (H) without aggregation where H holds no other *voting power* in the relevant *firm* and is not acting in concert with any other *person* (for example, where H exercises the *voting power* attaching to *shares* deposited with him pursuant to a discretion granted to him in the absence of (1) specific instructions from the actual shareholders, and (2) any agreement with the shareholders as to how he should exercise that *voting power* or any other rights attached to those *shares* - see section 422(5)(a)(vi) of the Act).

The provisions of section 422(5)(a) of the Act were transposed into the Act in order to implement Directive 2004/109/EC (the *Transparency Directive*). These provisions have direct application to Part XII of the Act, and in particular to the meaning of *voting power* for the purposes of that Part, by virtue of section 191G (Interpretation) of the Act.

In introducing the cases in which the *voting power* of a third party may be attributed to H, the *Transparency Directive* refers to the ability 'to acquire, to dispose of, or to exercise voting rights in any of the [relevant] cases or a combination of them.' No new purchase of *shares* is therefore required in order for these attribution provisions to apply.

**Q7: Where X holds 10% of the voting power in a firm and X is a controlled undertaking of H, which itself has no holding at all directly in the firm, is H a controller?**

**A:** Yes. This follows from section 422(5)(a)(v) of the *Act*, which provides that *voting power* includes, in relation to a *person* (H), *voting power* held by a *controlled undertaking* of H. The *voting power* held by X is attributed to H, making H a *controller*.

For the purposes of section 178 of the *Act*, both H and X would be required to notify and obtain the FCA's approval prior to acquiring or increasing *control*.

**Q7A: Where X holds 10% of the voting power in a firm and X is a controlled undertaking of H, which in turn is a controlled undertaking of A, is A a controller? In this example, A itself has no holding at all directly in the firm.**

**A:** Yes. The *voting power* held by X is attributed to H, in turn attributed to A, meaning that X, H and A would all be *controllers*.

### Practical application of aggregation of holdings

**Q8: Does there need to be a new purchase of shares or voting rights in order for the notification requirement to arise?**

**A:** No. As stated in the response to Question 4, the aggregation of *shares* and/or *voting power* is relevant to existing holdings of *shares* and/or *voting power* where no new purchase is to take place, as well as to new purchases.

**Q9: Do the aggregation provisions apply to shareholders agreeing how they will vote on a particular issue, for example, for reasons of good corporate governance?**

**A:** We would not generally regard shareholders as acting in concert for the purposes of section 178(2) of the *Act* or as having *deemed voting power* requiring aggregation pursuant to section 422(5)(a)(i) of the *Act* simply because they have agreed to vote together on a particular issue, for example:

- rejection of a proposal for the remuneration of directors;
- appointment/removal of a particular director; or
- approval/rejection of an acquisition or disposal proposed by the *firm's* board of directors.

However, there may be circumstances in which voting together on a specific issue would amount to acting in concert for these purposes. Where, for example, shareholders who have no previous agreement in relation to the exercise of the rights attached to their *shares* or *voting power* agree to act together for the purpose of voting through the resolution(s) required to enable them to obtain control of the board of a *firm*, that is likely to constitute acting in concert for these purposes, although it may not fall within section 422(5)(a)(i) of the *Act*, if those shareholders have no 'lasting common policy' towards the *firm's* management.

Those circumstances are likely to be exceptional and, while it is not possible in this guidance to give a definitive list of how they might arise, the FCA remains willing to provide *firms* with individual guidance on the point in cases of uncertainty.

**Q10: What about agreements that specific issues will be put to a vote of shareholders?**

**A:** An agreement that does no more than require particular management actions to be put to a vote of shareholders, such as major acquisitions, disposals or new issues of *shares*, would not of itself trigger the requirement to notify. This is because there is no agreement as to how the shareholders will exercise their rights on, or whether the shareholders will adopt a common policy towards, those proposals. An agreement which gives certain shareholders veto rights over key decisions by the *firm* may, however, bring those shareholders within the ambit of section 178(1) of the *Act* regardless of whether they are acting in concert, by virtue of their being able to exercise significant influence over the management of the *firm* - see section 181(2)(c) of the *Act*.

**Q11: What about agreements as to how to exercise voting power on future issues generally?**

**A:** This would involve acting in concert, and thus require the aggregation of holdings by the parties to the agreement, for the purposes of section 178 of the *Act*. It may also fall within the ambit of section 422(5)(a)(i) of the *Act*, but this will depend on whether the parties to the agreement have adopted a lasting common policy that relates to the management of the relevant undertaking.

Acting in concert not only covers agreements to exercise *voting power*, but may also arise as a result of 'passive shareholder agreements'. In these, a shareholder (the 'passive shareholder') agrees explicitly or implicitly with another shareholder or group of shareholders (the 'active shareholder') that it will not exercise its *voting power*. For example, where the passive shareholder holds 2% of the *voting power* and the active shareholder holds 9% of the *voting power*, each would be regarded as having *control* (11% of the *voting power*) because their holdings are required to be aggregated under the acting in concert provisions. However, *persons* that acquire *shares* as part of an investment or hedging programme and adhere consistently to a stated policy of not voting those *shares* would not, by reason of that policy alone, be regarded as having entered into an agreement with other shareholders and so would not be regarded as acting in concert with them.

**Q12: Are multiple purchasers of shares, who are each party to a share purchase agreement and whose combined shareholding will fall within section 181(2) of the Act, required to give notice pursuant to section 178(1) of the Act, on the basis that the existence of the agreement means they are acting in concert?**

**A:** If it is clear that the only 'agreement' between one or more *persons* consists in their being parties to the same *share* purchase agreement, the terms of which pertain strictly to the purchase of *shares* and do not govern or otherwise seek to regulate the purchasers' relationship with each other following completion of the *share* purchase, those purchasers would not be regarded by the *FCA* as acting in concert for the purpose of requiring notification under section 178 of the *Act*. If, however, the *share* purchase agreement contains provisions governing or otherwise regulating the exercise of the rights linked to the *shares* to be acquired by the purchasers (or the purchasers have entered into or propose to enter into a shareholders' or other agreement with similar effect), the proposed acquirers may be regarded by the *FCA* to be acting in concert for the purpose of requiring notification under section 178 of the *Act*, depending on the terms of the relevant agreement(s). Further guidance on the effect of some of the typical provisions included in shareholders' agreements is contained in the response to Question 14. Prospective shareholders who are uncertain as to the effect of any of the provisions of their agreement(s) in these circumstances may wish to seek (either formally or informally) individual guidance at an early stage from the *FCA*.

Where there is evidence to suggest that the parties do in fact intend to co-operate in relation to the exercise of voting or other rights relating to the *shares* they are acquiring, notwithstanding that no provisions to that effect appear in the *share* purchase or other written agreement, this may warrant the conclusion that there is an implicit agreement between them by virtue of which they are acting in concert.

**Q13: What about agreements that are conditional on any necessary approval by the appropriate regulator?**

**A:** Notice must be given under section 178(1) of the *Act* before *control* is acquired. The point in time at which this occurs may depend on a number of circumstances. In the context of a *share* purchase agreement that provides for *FCA* approval of the purchaser to be obtained before the acquisition is completed, the purchaser will not usually be required to give a section 178 notice prior to entering into the agreement. However, there may be circumstances in which *control* is actually acquired at the time the agreement is entered into, for example, where the parties have agreed that the purchaser will be entitled (whether by virtue of a power of attorney contained in the agreement or otherwise) to exercise the voting rights attached to the *shares* being acquired in the period between signing and completion. In that case, the purchaser will need to consider whether to give notice under section 178(1) prior to entering into the agreement.

**Q14: What about pre-emption rights, 'drag along' rights and 'tag along' rights?**

**A:** Typical examples of these arrangements are unlikely to trigger the requirement to notify under section 178(1) of the *Act* in themselves.

Bare pre-emption rights will simply indicate each shareholder's (the 'offeror') agreement to give fellow shareholders an option to purchase his *shares*, if he wishes to sell. The acquisition of *shares* under these arrangements cannot take place until the offeror decides to sell his *shares* and other shareholders decide to buy them.

Shareholders will not usually be regarded as acting in concert in holding or acquiring *shares* simply by agreeing to give each other future pre-emption rights. In the event that some shareholders enter into an agreement to buy the offeror's *shares*, those shareholders are only likely to be regarded as acting in concert by virtue of that agreement in the circumstances described in the response to Question 12 above.

The existence of 'drag along' and 'tag along' rights in a shareholders' agreement designed to ensure equivalent treatment of shareholders of the same class in the event an offer is made, or to be made, by a non-shareholder to purchase the *shares* of any single shareholder in a private company would not, in and of themselves, result in the shareholders who have the benefit of those rights being considered to be acting in concert in their holding or acquiring of *shares*.

**Q15: How does this guidance relate to the definition of 'acting in concert' in the Takeover Code (the 'Code')?**

**A:** Although similar terminology may be used, the definition of 'acting in concert' in the Code derives from the Takeovers Directive and has particular relevance in determining whether the relationship between *persons* with interests in *shares* carrying voting rights is such as to require those rights to be aggregated for the purpose of assessing whether, under Rule 9.1, the threshold for the making of a mandatory offer to all other shareholders in a company to which the Code applies has been reached. The notes on the definition in the Code and on Rule 9.1 make clear that the Takeover Panel's views in relation to acting in concert '...relate only to the Code and should not be taken as guidance on any other statutory or regulatory provisions'.

This guidance is given for a quite different purpose. It is relevant to considering whether the holdings of *persons* who have reached an agreement in relation to the *shares* or *voting power* they do or will hold must be aggregated for the purpose of determining whether they are subject to the requirements for prudential assessment specified in sections 185 *et seq* of the *Act*. This guidance has no relevance to how 'acting in concert' is to be interpreted in the context of the Code.

