

Chapter 18

Transfers of business

18.4 Friendly Society transfers and amalgamations

Purpose

- 18.4.1 **G** It is for the committee of management of a *friendly society* to decide whether to recommend an amalgamation or a transfer of engagements to the society's members. This section provides some *guidance* on the procedures to be followed and the information to be provided to a friendly society's members so that they are appropriately informed before they exercise their right to vote on the proposals.

General considerations

- 18.4.1A **G** In general, although the legislation governing transfers of engagements involves *friendly societies* is the Friendly Societies Act 1992, similar issues arise in these transfers as in *insurance business transfers* under Part VII of the Act and so the regulators would expect *firms* to be subject to a similar process followed under the Act. Accordingly, *firms* should usually first discuss the procedural aspects for dealing with *friendly society* transfers and amalgamations with the PRA. The PRA will consult the FCA as required by the Friendly Societies Act 1992, or as may otherwise appear to be appropriate.
- 18.4.2 **G** *Friendly societies* are encouraged to discuss a proposed transfer or amalgamation with the appropriate authority, at an early stage to help ensure that a workable timetable is developed. This is particularly important where there are notification requirements for supervisory authorities in states other than the *United Kingdom*, or for an amalgamation where additional procedures are required.
- 18.4.3 **G** The regulators will want to satisfy themselves that after an amalgamation or a transfer the business will be prudently managed and continue to comply with all applicable requirements.
- 18.4.4 **G** For a transfer to another *friendly society*, if the conditions of 87(1) and 87(2) of the Friendly Societies Act 1992 are met a report is required from the *appropriate actuary* of the transferee to confirm that it will meet the necessary margin of solvency. Where the conditions of 87(1) and 87(3) are met the appropriate authority may require a report from the *appropriate actuary* of the transferee to confirm that it will have an excess of assets over liabilities.

- 18.4.5** **G** For a transfer of *long-term insurance business*, the appropriate authority may, under section 88 of the Friendly Societies Act 1992, require a report from an independent *actuary* on the terms of the proposed transfer and on his opinion of the likely effects of the transfer on long-term *policyholder* members of either the transferor or (if it is a *friendly society*) the transferee. A summary is included in the statement sent to members (see ■ SUP 18.4.13 G) and the full report is required to be made available to anyone on payment of a reasonable fee. The general principles in ■ SUP 18.2.32 G to ■ SUP 18.2.40 G apply to the independent *actuary's* report.
- 18.4.6** **G** Under the Friendly Societies Act 1992 the appropriate authority is required to confirm a proposed transfer of engagements. It will do so only where it is satisfied that the transfer is in the interests of the members of each *friendly society* participating in the transfer (see ■ SUP 18.4.25 G (2)(b)). The appropriate authority will therefore ask that the participating societies' *actuaries* confirm that the transfer is in the interests of the members.
- 18.4.7** **G** Under the Friendly Societies Act 1992, members will normally have the opportunity to vote on a proposed transfer or amalgamation (■ SUP 18.4.11 G and ■ SUP 18.4.12 G describe exceptions). A *friendly society* has to ensure that, before casting their votes, its members are clearly and fully informed of the terms on which the amalgamation or transfer of engagements is to take place and that they have all the information needed to understand how their interests will be affected. If the society's rules permit, delegates can vote except on an "affected members' resolution" under section 86. The appropriate authority may not confirm an amalgamation or a transfer if it considers that information material to the members' decision was not made available to all the members eligible to vote.
- 18.4.8** **G** Amendments to a friendly society's registered rules may be necessary to permit a transfer to it. The *FCA* will need to be consulted in the usual way about registration of the appropriate rules. Similarly for an amalgamation, each of the amalgamating societies has to approve the memorandum and rules of the new society and the requirements of schedule 3 to the Friendly Societies Act 1992 have to be met. It will be necessary to allow adequate time for these processes.
- 18.4.9** **G** For an amalgamation the successor society, and for a transfer the transferee, may need to apply for *permission*, or to vary its *permission*, under Part 4A of the *Act*. The regulators will need sufficient time before a transfer is confirmed to consider whether any necessary *permission* or variation should be given. If the transferee is a *Swiss general insurance company*, then confirmation will be needed from its regulator that it meets relevant solvency margin requirements (see ■ SUP 18.4.25 G (3)).
- 18.4.10** **G** It is likely that the information sent to members will include a statement explaining the reasons for the amalgamation or transfer and the choice of partner. Although this is not a statutory statement and not subject to either regulator's approval, the regulator's views on the content of the statement will be a factor that the appropriate authority will take into account before considering whether to confirm the amalgamation or transfer. A *friendly society* will therefore find it helpful to consult the regulators about the content of such a statement.

Exercise of discretion by the appropriate authority

18.4.11 **G** The appropriate authority has discretion under section 86(3)(b) of the Friendly Societies Act 1992 to allow a transferee society to resolve to undertake to fulfil the engagements of a transferor society by resolution of the committee of management, rather than by special resolution. Among the issues on which the appropriate authority will wish to be satisfied before exercising this discretion, are that the transfer will be in the interests of the members of both societies and that the transfer will not mean a change of policy by the transferee society. The appropriate authority is unlikely to exercise this discretion unless the transferee is significantly larger than the business to be transferred.

18.4.12 **G** The appropriate authority has discretion under section 89 of the Friendly Societies Act 1992 to modify some of the requirements for a transfer of engagements from a *friendly society*, on the application of a specified number of its members, if it is satisfied that it is expedient to do so in the interests of its members or potential members.

Schedule 15 statement to members

18.4.13 **G** Schedule 15 to the Friendly Societies Act 1992 requires a statement to be sent to every member of a *friendly society* entitled to vote on a transfer or amalgamation. Among other matters this statement has to cover the financial position of the *friendly society* and every other participant in the transfer or amalgamation. The members should be provided with sufficient financial information about the respective financial positions of the participants to gain an understanding of the relative financial strengths and *key features* of the participants. The statement has to include a summary of any *actuary's* report under section 88, though the appropriate authority may direct that the summary is to be provided separately if inclusion appears impractical.

18.4.14 **G** The financial information provided under **■ SUP 18.4.13 G** would normally contain comparative statements of balance sheets at the same date, and include main investments, reserves and funds or technical provisions, with details of the number of members of each participant as at the balance sheet date and the *premium* income of the relevant fund of each participant during the financial year to which the balance sheet relates. **■ SUP 18.4.15 G** to **■ SUP 18.4.18 G** give further *guidance* on the financial information to be included.

18.4.15 **G** If the information relates to a position some time in the past, the information should state that there has been no significant change or include a clear description of the changes. Differences in accounting *policies* and reporting requirements could lead to the loss of some comparability between participants. Such differences and their estimated financial effects (if any) should be explained.

18.4.16 **G** The information should state whether any of the participants has any significant future capital commitments. The appropriate authority will require it to state that the transfer of engagements or amalgamation will not conflict with any contractual commitment by a society, any *subsidiary* or any body jointly controlled by it and others.

18.4.17 **G** Brief details should be given of the date of the last actuarial valuation and the position revealed (surplus/deficit, necessary margin of solvency and free assets) for each participant.

18.4.18 **G** The appropriate authority may require confirmation from the auditors of either *friendly society* involved in the transfer or amalgamation about the reasonableness of any part of the information in the statement. For instance such confirmation would normally be required if the financial information relates to a date more than six months previously.

18.4.19 **G** The statement is required to include particulars of:

(1) any interest of the members of the committee of management in the amalgamation or transfer; and

(2) any compensation or other consideration proposed to be paid to committee members or other *officers* of the society and to the *officers* of every other society or *person* participating in the amalgamation or transfer.

Under section 92 of the Friendly Societies Act 1992, any compensation must be approved by a special resolution, separate from any resolution approving other terms of the amalgamation or transfer. This enables members to vote on this as a separate issue.

18.4.20 **G** Under schedule 15 to the Friendly Societies Act 1992, the appropriate authority may require the statement to include any other matter. Under this provision, inclusion of the terms on which the amalgamation or the transfer of engagements is to be made will usually be required.

18.4.21 **G** The statement should be clearly separate from other information sent to members. It has to be approved by the appropriate authority and if it is not in a self-contained document, the approved element should appear in a separate section.

18.4.22 **G** ■ SUP 18 Annex 1 provides an example of the information for members required by Schedule 15.

Confirmation procedures and criteria

18.4.23 **G** Under the Friendly Societies Act 1992:

(1) when the members of a transferor society have approved the transfer of its engagements by passing a special resolution and the transferee has approved the transfer (by passing a resolution where the transferee is a *friendly society*); or

(2) when two or more societies have approved a proposed amalgamation by passing a special resolution;

it, or they jointly, must then obtain confirmation by the appropriate authority of the transfer. Notice of the application will need to be published

in one or more of the London, Edinburgh or Belfast Gazettes and other newspapers as directed by the appropriate authority. If the appropriate authority confirms a transfer, then the *FCA* will register the society's instrument of transfer after receiving an application on the appropriate form by the transferor society and the transferee. If the appropriate authority confirms an amalgamation, the *FCA* will register the successor society. All the property, rights and liabilities pass on the transfer date specified by the appropriate authority.

18.4.24 **G** [deleted]

18.4.25 **G** The criteria that the appropriate authority must use in determining whether to confirm a proposed amalgamation or transfer are set out in schedule 15 to the Friendly Societies Act 1992. These criteria include that:

- (1) confirmation must not be given if the appropriate authority considers that:
 - (a) there is a substantial risk that the successor society or transferee will be unable lawfully to carry out the engagements to be transferred to it;
 - (b) information material to the members' decision about the amalgamation or transfer was not made available to all the members eligible to vote;
 - (c) the vote on any resolution approving the amalgamation or transfer does not represent the views of the members eligible to vote; or
 - (d) some relevant requirement of the Friendly Societies Act 1992 or the rules of any of the participating societies was not fulfilled (but it can modify some requirements and direct that certain failures may be disregarded, see ■ SUP 18.4.12 G and ■ SUP 18.4.27 G);
- (2) the appropriate authority must be satisfied that:
 - (a) the transferee or successor society will have any *permissions* necessary under Part 4A of the *Act*;
 - (b) for a transfer, it is in the interests of the members of each *friendly society* participating in it (see ■ SUP 18.4.6 G); and
 - (c) [deleted]
- (3) for a transfer, the transferee possesses the necessary margin of solvency after taking the proposed transfer into account or, where it is not required to maintain a necessary margin of solvency, possesses an excess of assets over liabilities (for a transferee that is a *Swiss general insurance company*, this is evidenced by a certificate from its regulator).

18.4.26 **G** If *authorisation* or a *Part 4A permission* is needed, the appropriate authority will need to consider the application for *authorisation* or *permission* in the usual way. If the *authorisation* or *permission* is refused, confirmation cannot be given even if all the other criteria are met.

18.4.27 G The appropriate authority may (as an alternative to refusing confirmation) direct the society or societies to remedy certain procedural defects in a proposed transfer or amalgamation, and after they have been remedied confirm the application. If it appears to the appropriate authority that failure to meet a "relevant requirement" of the Friendly Societies Act 1992 or the rules of the *friendly society* could not be material to the members' decision, then it may direct that this failure is to be disregarded.

Confirmation procedures: representations

18.4.28 G Any interested party has the right to make representations to the appropriate authority about an application for confirmation of a transfer or amalgamation. This includes any *person* (whether a member of the *friendly society* or not) who claims that he would be adversely affected by the amalgamation or transfer. The *person* making the representations should state clearly why he or she claims to be an interested party and the ground or grounds to which the representations are directed.

18.4.29 G Written representations, or written notice of a *person's* intention to make oral representations, or both, are required to reach the appropriate authority by the date published in the relevant Gazettes and other newspapers. Those giving notice of intent to make oral representations are advised to state the nature and general grounds of the oral representations they intend to make. *Persons* who make written representations but subsequently decide also to make oral representations are required, nevertheless, to give notice of that intention, in writing, to the appropriate authority by the same date.

18.4.30 G The appropriate authority will send copies of all written representations to the society(ies), and will afford them an opportunity to comment on the representations. It may consider the written representations and a society's response to them, before the date set for hearing oral representations. A synopsis of the written representations (probably in the form of a summary of each of the points made and the numbers of *persons* making each point) and a society's responses will be made available to those participating in the hearing. This is intended to inform those making oral representations of the points already being considered by the appropriate authority.

18.4.31 G The regulators expect that any documents referred to in a society's comments will be made available by the society for inspection at its registered office and, if reasonably possible, at the venue of the hearing on the date of the hearing. However if a society applies to put documents which it considers to be sensitive to the regulator(s) in confidence, the regulators will balance any disadvantage this might cause interested parties in making representations against the commercial damage that publication of the documents might cause, and the appropriate authority may permit the documents or sensitive parts of them not to be available for inspection.

Confirmation hearing

18.4.32 G Interested parties may be represented and may make collective representations. Such arrangements should be notified to the appropriate authority in advance to enable it to make appropriate arrangements.

- 18.4.33** **G** The hearing referred to in **■ SUP 18.4.30 G** will be at a time and place that will be notified to the participants and will be conducted by the appropriate authority's representatives. The hearing may last longer than one day and may be adjourned. The appropriate authority will try to tell participants when they may expect to make their representations and when the society may be expected to respond.
- 18.4.34** **G** The appropriate authority expects that oral hearings will be held in public though this is not required. At the start members of the general public and the press will be asked to wait outside while participants are asked if any of them has good reason to object to the admission of the general public or the press. Unless an objection by a participant is upheld by the appropriate authority's representatives, the press and the general public will then be admitted, within the limits of the space available. However, the appropriate authority's representatives may decide that parts of the hearing will be in private if that appears to them to be desirable.
- 18.4.35** **G** The procedure will be informal. All participants will be expected to speak concisely and avoid repetition. The appropriate authority will, as far as practicable, help those who are not professionally represented. Those taking the hearing may question the participants. The sequence of events will normally be broadly:
- (1) any preliminary matters (such as the admission of the public or other procedural questions) will be dealt with;
 - (2) the chair of the hearing will introduce the proceedings;
 - (3) the society representatives will be invited to speak on the application, including a description of the events at the meeting at which the resolution to amalgamate or transfer was put to the members, a statement of the voting on the resolution, and any other matters which they wish to introduce at that stage;
 - (4) the other participants will be invited to speak to their representations. The appropriate authority expects to call them in order of a list arranged, so far as possible, by subject matter;
 - (5) the society representatives will be invited to reply to, or comment on, the points made by the other participants; and
 - (6) the other participants will be invited to comment on the society replies.
- 18.4.36** **G** The above procedure may be varied according to the circumstances at the hearing, and is intended only as a guide. The hearing may be adjourned if the appropriate authority's representatives consider that necessary to enable facts to be checked or additional information to be obtained.
- 18.4.37** **G** The appropriate authority will not decide whether to confirm the transfer or amalgamation at the hearing. A copy of its written decision, including its findings on the points made in representations, will be sent to the society(ies) and to those making representations. It will also be available to any other *person* on request and may be published.