

**SUPERVISION MANUAL (AMENDMENT NO 5) INSTRUMENT 2001**

**Powers exercised**

- A. The Financial Services Authority amends the Supervision manual in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance);
  - (4) section 340 (Appointment).
- B. The provisions of the Act relevant to rules and listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force at the beginning of the day on which section 19 of the Act (The general prohibition) comes into force.

**Amendment of the Supervision manual**

- D. The Supervision manual is amended:
- (1) in accordance with Annexes A and B to this instrument; and
  - (2) by inserting the provisions in Annexes C, D and E to this instrument.

**Citation**

- E. This instrument may be cited as the Supervision Manual (Amendment No 5) Instrument 2001.

By order of the Board  
15 November 2001

**ANNEX A**  
**SUP 3 (Auditors)**

In this Annex, where amendments are shown rather than described, underlining indicates new text and striking through indicates deleted text.

SUP Transitional provisions In the first table of transitional provisions, insert the following new rows:

3A	<i>SUP 3.10</i>	R	<p>(1) Paragraphs (2) and (3) apply to the auditor of an <i>authorised professional firm</i>:</p> <p>(a) if that <i>firm</i> has an <i>accounting reference date</i> between 1 June 2001 and 30 November 2001 (inclusive); and</p> <p>(b) in relation to delivery of a client assets report on that <i>firm</i> for the period ending on that <i>accounting reference date</i>.</p> <p>(2) An auditor will not contravene <i>SUP 3.10.4R, SUP 3.10.5R, SUP 3.10.9R or SUP 3.10.10R</i> by delivering a report in the format required by the rules of the <i>firm's previous regulator</i> for client asset reports.</p> <p>(3) <i>SUP 3.10.7R</i> is changed so that the period for delivery of the report is the longer of:</p> <p>(a) four months from the <i>firm's accounting reference date</i>; and</p> <p>(b) the period permitted under the rules of the <i>firm's previous regulator</i>.</p>	From commencement for six months	<i>Commencement</i>
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3B	SUP 3.10.6R, SUP 3.10.7R	G	<p>Auditors affected by paragraph 3A are reminded that:</p> <p>(1) if the report has been delivered to the <i>firm's previous regulator</i> before <i>commencement</i>, it need not be delivered to the <i>FSA</i> (paragraph 7 of the transitional provisions in <i>GEN</i>); in this case, the first report to the <i>FSA</i> should cover a period ending not more than 53 weeks after the period covered by the last report to the <i>previous regulator</i>;</p> <p>(2) a report delivered after <i>commencement</i> should be submitted and addressed to the <i>FSA</i> in accordance with SUP 16.3.6R to SUP 16.3.13R; and</p> <p>(3) the auditor is free to fulfil its duty to deliver a report to the <i>FSA</i> by doing so before <i>commencement</i> (paragraph 3 of the transitional provisions in <i>GEN</i>).</p>	From <i>commencement</i> for six months	<i>Commencement</i>
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SUP 3.1.2R Amend the table as shown:

(1)	Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(1)	<u>Authorised professional firm which is required by IPRU(INV) 2.1.2R to comply with chapter 3, 5, 10 or 13 of IPRU(INV) (Note 1)</u>	<u>SUP 3.1 – SUP 3.7</u>	<u>SUP 3.1, SUP 3.2, SUP 3.8 – SUP 3.10</u>
(2)	<u>Authorised professional firm not within (1) to which either or both of COB 9.1 (Custody) and COB 9.3 (Client money) applies, unless the firm is regulated by The Law Society (England and Wales), The Law Society of Scotland or The Law Society of Northern Ireland (Note 2)</u>	<u>SUP 3.1 – SUP 3.7</u>	<u>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</u>
(3)	<u>Authorised professional firm not within (1) or (2) which has an auditor appointed under or as a result of a statutory provision other than in the Act</u>	<u>SUP 3.1, SUP 3.2, SUP 3.7</u>	<u>SUP 3.1, SUP 3.2, SUP 3.8</u>

(4) (+)	<i>Bank or building society which in either case carries on designated investment business</i>	<i>SUP 3.1 – SUP 3.7</i>	<i>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</i>
(5) (2)	<i>Bank or building society which in either case does not carry on designated investment business</i>	<i>SUP 3.1 – SUP 3.7</i>	<i>SUP 3.1, SUP 3.2, SUP 3.8</i>
(6) (4)	<i>Insurer, the Society of Lloyd's, underwriting agent or members' adviser</i>	<i>SUP 3.1 – SUP 3.7</i>	<i>SUP 3.1, SUP 3.2, SUP 3.8</i>
(7) (3)	<i>Investment management firm, personal investment firm (other than a small personal investment firm), or securities and futures firm (Note 43)</i>	<i>SUP 3.1 – SUP 3.7</i>	<i>SUP 3.1, SUP 3.2, SUP 3.8 - SUP 3.10</i>
(8) (5)	<i>Small personal investment firm or service company or authorised professional firm which, in each case, has an auditor appointed under or as a result of a statutory provision other than in the Act (Note 2)</i>	<i>SUP 3.1, SUP 3.2, SUP 3.7</i>	<i>SUP 3.1, SUP 3.2, SUP 3.8</i>

Note ~~12~~ = This note applies in relation to an *authorised professional firm* which is required by *IPRU(INV)* 2.1.2R to comply with chapter 3, 5, 10 or 13 of *IPRU(INV)*. This chapter applies to such an *authorised professional firm* in row (1) (and its auditor) as if it were the *firm* were of the relevant *firm* type in the right-hand column of *IPRU(INV)* 2.1.4R.

Note 2 = In row (2):

(a) *COB* 9.1 (Custody) is treated as applying only if (i) the *firm* safeguards and administers investments in connection with managing investments (other than when acting as trustee) or (ii) it safeguards and administers investments in relation to bonded investments;

(b) *COB* 9.3 (Client money) is treated as applying only if the *firm* receives or holds client money other than under an arrangement where commission is rebated to the client;

but, if *COB* 9.1 or *COB* 9.3 is treated as applying, then *SUP* 3.10 (Duties of auditors: notification and report on client assets) applies to the whole of the business within the scope of *COB* 9.1 or *COB* 9.3.

Note ~~13~~ = This note applies in relation to an *oil market participant* to which *IPRU(INV)* 3 does not apply and in relation to an *energy market participant* to which *IPRU(INV)* 3 does not apply. In *SUP* 3:

(a) only *SUP* 3.1, *SUP* 3.2 and *SUP* 3.7 are applicable to such a *firm*;  
and

(b) only *SUP* 3.1, *SUP* 3.2 and *SUP* 3.8 are applicable to its auditor;  
and, in each case, only if it has an auditor appointed under or as a result of a statutory provision other than in the *Act*.

SUP 3.1.8G Amend the heading as shown:

Authorised professional firms ~~Auditors of firms of solicitors subject to SUP 3.10~~

SUP 3.1.8G Amend as shown:

A *firm* of solicitors is not required to comply with the *client money rules* (*COB* 9.3) and instead must comply with its *designated professional body's* rules (*COB* 9.3.25R). *SUP* 3.10 is therefore modified for the auditor of such a *firm*, if it applies (see Note 2 to the table in *SUP* 3.1.2R and *SUP* 3.10.2R). This chapter applies to an *authorised professional firm* as set out in rows (1) to (3) of *SUP* 3.1.2R:

(1) a *firm* in row (1) is treated in the same way as its equivalent in row (7);

- (2) large parts of this chapter apply to a *firm* in row (2) and its auditor; the report on client assets under *SUP* 3.10 (Duties of auditors: notification and report on client assets) must cover compliance for the whole of the business within the scope of whichever of *COB* 9.1 and *COB* 9.3 is treated as applying; but there is no requirement for the auditor to prepare a report to the *FSA* on the firm's financial statements;
- (3) this chapter has limited application to a *firm* in row (3) and its auditor.

SUP 3.2.4G Amend as shown:

*SUP* 3.1.1R and *SUP* 3.1.2R limit the application of this chapter in relation to:

- (1) *authorised professional firms to which *COB* 9.1 (Custody) and *COB* 9.3 (Client money) do not apply or which are not required by *IPRU(INV)* 2.1.2R to comply with chapter 3, 5, 10 or 13 of *IPRU(INV)*;*
- (2) *oil market participants, and energy market participants, to whom *IPRU(INV)* 3 does not apply;*
- (3) *small personal investment firms; and*
- (4) *service companies.*

Such a *firm* is not required, under this chapter, to appoint an auditor because *SUP* 3.3 (Appointment of auditors) does not apply. If such a *firm* appoints an auditor under or as a result of a statutory provision other than in the *Act*, for example, under the Companies Act 1985, *SUP* 3.7 (Notification of matters raised by auditor) and *SUP* 3.8 (Rights and duties of all auditors) nevertheless apply to help the *FSA* discharge its functions under the *Act*.

**Annex B**  
**SUP 15 (Notification to the FSA)**

SUP 15.8      Insert the following new rule:

15.8.3      **Insurers' commission clawback**

- R (1) An *insurer* must notify the *FSA* in respect of any *firm* (the "intermediary") as soon as reasonably practicable if:
- (a) any amount of *commission* due from the intermediary to the *insurer* in accordance with an indemnity commission clawback arrangement remains outstanding for four *months* after the date when the *insurer* gave notice to the intermediary that the relevant *premium* had not been paid; or
  - (b) any amount of *commission* due from the intermediary to the *insurer* as a result of either the cancellation of an investment agreement or overpayment of *commission* remains outstanding for four *months* after the date on which the *insurer* gave notice to the intermediary that cancellation or overpayment had occurred.
- (2) A notification in (1):
- (a) need not be given unless the total amounts outstanding under (1)(a) and (b) in respect of the intermediary exceed £1,000; and
  - (b) must give the identity of the intermediary and the amount of *commission* which remains outstanding.
- (3) In (1) an "indemnity commission clawback arrangement" is an arrangement under which:
- (a) an *insurer* pays *commission* to an intermediary before the date on which the *premium* is due under the relevant *investment agreement*; and
  - (b) the *insurer* requires repayment of the *commission*, if the *investment agreement* is terminated by reason of a failure to pay a *premium*.

## Annex C

# SUP chapter 18

## 18 Transfers of business

### 18.1 Application

- 18.1.1 G This chapter provides *guidance* in relation to business transfers.
- (1) *SUP* 18.2 applies to any *firm* or to any *member* of Lloyd's proposing to transfer the whole or part of its business by an *insurance business transfer scheme* or to accept such a transfer. *SUP* 18.2.31G to *SUP* 18.2.41G also apply to the *independent expert* making the *scheme report*.
  - (2) *SUP* 18.3 applies to any *firm* proposing to accept certain transfers of *insurance business* taking place outside the *United Kingdom*.
  - (3) *SUP* 18.4 applies to any *friendly societies* proposing to amalgamate under section 85 of the Friendly Societies Act 1992, to any *friendly society* proposing to transfer engagements under section 86 of that Act to another body and to any body (whether or not it is a *friendly society*) proposing to accept such a transfer. *SUP* 18.4 also provides *guidance* to those wishing to make representations to the *FSA* about an application for confirmation of an amalgamation or transfer.

- 18.1.2 G *Guidance* on *building society* transfers and mergers is given in *IPRU(BSOC)*.

#### INTRODUCTION

- 18.1.3 G *Insurance business transfers* are subject to Part VII of the *Act* and must be approved by the court under section 111. The Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) Regulations 2001 (SI 2001/[number to be inserted later]) also apply. These regulations set out minimum requirements for publicising schemes, notifying certain interested parties directly (subject to the discretion of the court), and giving information to anyone who requests it.
- 18.1.4 G An *insurance business transfer scheme* is defined in section 105 of the *Act* and the definition has been extended to transfers from *members* of Lloyd's to reflect the effect of the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001(SI 2001/[number to be inserted later]). With certain exclusions (relating to some schemes approved under foreign legislation, some novations of reinsurance or some *captive insurers*), it includes, in broad terms, any scheme to transfer *insurance business* from one *firm* (other than a *friendly society*) or *members* of Lloyd's to another body (which may be a *friendly society*), if:
- (1)
    - (a) the transferor is an "UK authorised person" and the business is being carried on in one or more *EEA States*; or
    - (b) the business is reinsurance carried on in the *United Kingdom*; or
    - (c) the business is carried on in the *United Kingdom* and the transferor is not an *EEA firm*; and
  - (2) in each case, the transferred business will be carried on from an establishment in the *EEA*.



The business transferred may include liabilities and potential liabilities on expired *policies*, liabilities on current *policies* and liabilities on contracts to be written in the period until the transfer takes effect. The parties to schemes approved under foreign legislation or involving novations of reinsurance or a captive *insurer* can apply to the court for an order sanctioning the scheme.

- 18.1.5 G In the opinion of the *FSA*, a novation or a number of novations would constitute an *insurance business transfer* only if their number or value were such that the novation was to be regarded as a transfer of part of the business. A novation is an agreement between the *policyholder* and two *insurers* whereby a contract with one *insurer* is replaced by a contract with the other. In the opinion of the *FSA*, where an *insurer* agrees to meet the liabilities (this may include undertaking the administration of the *policies*) of another *insurer* by means of a reinsurance contract, including Lloyd's *reinsurance to close*, this would not constitute an *insurance business transfer* because the contractual liability remains with the original *insurer*, nor would an arrangement whereby an *insurer* offers to renew the *policies* of another *insurer* on their expiry date.
- 18.1.6 G Under section 112 of the *Act*, the court has wide discretion to transfer property and liabilities to the transferee and to make orders in relation to incidental, consequential and supplementary matters. In the opinion of the *FSA*, the court has the power in such cases and on such terms as may be appropriate, to transfer the benefit of reinsurance contracts protecting the transferred business and to make such amendments to the terms of those contracts as may be necessary to give effect to that transfer of benefit.
- 18.1.7 G Amalgamations of *friendly societies* and transfers of engagements from *friendly societies* to other bodies (whether or not *friendly societies*) are governed by part VIII of the Friendly Societies Act 1992 and Schedule 15 to that Act applies.

## 18.2 Insurance business transfers

### PURPOSE

- 18.2.1 G Transfers enable *firms* to manage their affairs more effectively, both for their own benefit and for that of their *customers*. However they represent an interference in the contracts between a *firm* and its *customers*, unless the *customers* individually consent, and may also affect the rights of third parties. An important protection is the requirement for the consent of the court. Under section 110 of the *Act*, the *FSA* is entitled to be heard by the court. In deciding whether it should appear, the *FSA* will consider the potential risk to its *regulatory objectives* of the scheme compared to not implementing the scheme.
- 18.2.2 G The *FSA's regulatory objectives* include market confidence and the protection of *consumers*. Either or both of these might be impaired if a transfer were approved that led to loss, or perceived loss, to *consumers* or other market participants. On the other hand a transfer that led to improved security or benefits for *consumers* would promote the *FSA's regulatory objectives*. When considering a transfer, the *FSA* needs to take into account the interests of existing *consumers* of the transferee and of *consumers* remaining with the transferor as well as of those whose contracts are being transferred. The *guidance* in this section is intended to protect *consumers*. By so doing it promotes the market confidence objective.
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- 18.2.3 G Under section 5(2) of the *Act*, in considering what degree of protection may be appropriate for *consumers*, the *FSA* must have regard to their need for accurate information. Under *Principle 7*, a *firm* must pay due regard to the information needs of *clients* (the scope of the *Principle* is not precisely *consumers*). The extent and nature of the information provided to *consumers* about a proposed scheme will therefore be a factor for the *FSA* in determining its attitude to the scheme. For the court process to be an effective protection, *consumers* and others affected need to learn of the proposed transfer and receive sufficient information on the transfer and its effects in such a form as to enable them to decide if they are likely to be adversely affected, and whether they wish to be heard by the court. The information needed depends on the circumstances and cannot be precisely specified in advance but this chapter contains *guidance* aimed at ensuring that *consumers*, the *FSA* and the court receive adequate information.
- 18.2.4 G Under *Principle 11*, a *firm* must deal with the *FSA* in an open and cooperative way and disclose to the *FSA* appropriately anything relating to the *firm* of which the *FSA* would reasonably expect notice. This chapter contains *guidance* on the information that the *FSA* expects to receive from *firms* and *members* of Lloyd's in the context of *insurance business transfer schemes*.
- 18.2.5 G Under *Principle 6*, a *firm* must treat *customers* fairly (the scope of the *Principle* is not precisely *consumers*) and, under *Principle 8*, manage conflicts of interest fairly. A criterion for the *FSA* in considering a proposed scheme would be whether it appears that either *Principle* is not being followed. Transfers may have both positive and negative effects on individual *consumers*. In such circumstances it is for *consumers* to balance these effects and assess whether the proposed scheme as a whole is in their interests and whether to make representations to the court about the scheme. The *FSA*'s main concern then becomes to ensure that *consumers* have appropriate information and not to set its judgment over theirs.
- 18.2.6 G A scheme may have a material effect on the transferor or the transferee. The *FSA* will take any scheme into account in its future regulation of the *firms*, where it continues to regulate them. This could include, for instance, the exercise of own-initiative powers under section 45 of the *Act* to vary a *firm's Part IV permission*, for instance, by requiring a *scheme of operations* (*SUP 7* contains *guidance* on criteria for varying a *firm's Part IV permission*).
- 18.2.7 G For many transfers it is necessary to cooperate with *overseas regulators*. This section contains *guidance* on such cooperation.
- 18.2.8 G Section 86(8) of the Friendly Societies Act 1992 requires, where a transferee is a *friendly society*, that consent to accept the engagements is passed by special resolution in accordance with paragraph 7 of Schedule 12 to that Act. This section includes *guidance* about the information needed in these circumstances.
- 18.2.9 G Under section 109 of the *Act*, an *insurance business transfer scheme* must be accompanied by a *scheme report* in a form approved by the *FSA*. This section contains *guidance* on the form of a *scheme report*.
- 18.2.10 G Also under section 109 of the *Act*, the *scheme report* must be made by a *person* nominated or approved by the *FSA*. This section contains *guidance* on the procedures and general criteria that the *FSA* proposes to adopt for this purpose.
- 18.2.11 G The *FSA* has a duty under section 2(3) of the *Act* "to have regard to the need to use its resources in the most efficient and economic way". The extent to which (if at all) it examines and considers the details of a scheme and the resources it devotes to such consideration will depend on the potential risk to its *regulatory objectives*.
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## PROCEDURE: INITIAL STEPS

- 18.2.12 G When an *insurance business transfer scheme* is being considered, the scheme promoters (including the transferor and, except possibly if it is a new *company*, the transferee) should discuss the scheme with the *FSA* as soon as reasonably practical, to enable the *FSA* to consider what issues are likely to arise, and to enable a practical timetable for the scheme to be agreed. The *FSA* will wish to consider material issues relating to *policyholder* rights (such as the reasonable expectations of with-profits *policyholders*) or *policyholder* security at the earliest opportunity. In any case the *FSA* will need time to:
- (1) consider the application, if an application by the transferee for a *Part IV permission* or a variation of *permission* is necessary (*AUTH* and *SUP* 6 provide *guidance* on this);
  - (2) seek information or approvals from other supervisors (where this applies);
  - (3) consider what skills are needed to make a proper report on the scheme and what criteria should therefore be applied to the choice of *independent expert*;
  - (4) consider whether the promoters' nominee for *independent expert* is suitable for approval or, if the *FSA* proposes to nominate someone, who the *FSA* should nominate; and
  - (5) consider whether to object to the scheme in the light of the report and other circumstances.

- 18.2.13 G The initial information on the scheme provided to the *FSA* under *SUP* 18.2.12G should include its broad outline and its purpose. The *FSA* will indicate to the promoters how closely it wishes to monitor the progress of the scheme, including the extent to which it wishes to see draft documentation.

## INDEPENDENT EXPERT: QUALIFICATIONS

- 18.2.14 G Under section 109(2) of the *Act* a *scheme report* may only be made by a *person*:
- (1) appearing to the *FSA* to have the skills necessary to enable him to make a proper report; and
  - (2) nominated or approved for the purpose by the *FSA*.
- 18.2.15 G The general principles set out in *SUP* 5.4.8G, for suitability of a *skilled person*, apply also to the *independent expert*. The *FSA* expects the *independent expert* making the *scheme report* to be a natural person, who:
- (1) is independent, that is any direct or indirect interest or connection he has or has had in either the transferor or transferee should not be such as to prejudice his status in the eyes of the court; and
  - (2) has relevant knowledge, both practical and theoretical, and experience of the types of *insurance business* transacted by the transferor and transferee.
- 18.2.16 G For a transfer of *long-term insurance business* the *independent expert* should be an *actuary* familiar with the role and responsibilities of an *appointed actuary*.
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18.2.17 G For a transfer of *general insurance business* the *independent expert* should normally be competent at assessing technical provisions and the uncertainties of the liabilities they represent (such as an *actuary*). Exceptionally, where issues other than the ability of the transferee to meet the liabilities to be transferred are much more significant in assessing the likely effects of the scheme, this criterion might not be applied. In such a case the *independent expert* would be expected to take advice from an appropriately qualified practitioner about the adequacy of the financial resources of the transferee.

18.2.18 G The *independent expert* would not normally be expected to be knowledgeable:

- (1) about *general insurance business* if the business being transferred is *long-term insurance business* only; nor
- (2) about *long-term insurance business* if the business being transferred is *general insurance business* only;

but, where either the transferor or transferee is a composite, he should understand the relevance of the *general insurance business* to the security of the *long-term insurance business policyholders* and vice versa and may need to seek independent specialist advice.

#### **INDEPENDENT EXPERT: APPOINTMENT**

18.2.19 G The suitability of a *person* to act as an *independent expert* depends on the nature of the scheme and the *firms* concerned. On the basis of the preliminary information supplied by the scheme promoters (and any other knowledge it has of the circumstances and the *firms*), the *FSA* will consider what skills are needed to make a proper report on the scheme and what criteria should therefore be applied to the choice of *independent expert*. The *FSA* will inform the promoters of any such criteria it is minded to apply.

18.2.20 G Under section 107(2) of the *Act*, the application to the court may be made by the transferor or the transferee or both. As soon as reasonably practical, the intended applicant should choose their nominee for *independent expert* in the light of any criteria advised by the *FSA* and advise the *FSA* of their choice, unless the *FSA* wishes them to defer nomination or to make its own nomination. The notification should be accompanied by reasons why the party considers the nominee to be a suitable *person* to act as *independent expert*, together with relevant details of his experience and qualifications.

18.2.21 G The *FSA* may wish to have preliminary discussions with the nominee about the transfer to help the *FSA* determine whether he is suitably qualified to address issues arising from the transfer. The *FSA* will consider the suitability of the nominee and inform the *firm* that nominated him whether it approves him. Since the nature of the scheme is a factor in determining the suitability of the nominee, the *FSA* cannot approve a nominee before the broad outlines of the scheme have been determined. If the *FSA* rejects a nominee, it will normally inform him and, with the agreement of the nominee, the applicant of the reasons for the rejection.

18.2.22 G The *FSA* may itself nominate the *independent expert*, either where it indicates that a nomination is not required by the parties, or where it does not approve the parties' own nomination. In either case it will inform the promoters of its nominee.

18.2.23 G *Firms* should co-operate fully with the *independent expert* and provide him with access to all relevant information and appropriate staff.

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## CONSULTATION WITH OTHER REGULATORS

- 18.2.24 G The *guidance* set out in SUP 18.2.25G to SUP 18.2.30G derives from the requirements of the *Insurance Directives* and the associated agreements between *EEA regulators*. Schedule 12 of the *Act* implements some of these requirements.
- 18.2.25 G If the transferee is (or will be) an *EEA firm* (authorised in its *Home State* to carry on *insurance business* under the *Insurance Directives*) or a *Swiss general insurance company*, then the *FSA* has to consult the transferee's *Home State regulator*, who has 3 months to respond. It will be necessary for the *FSA* to obtain from the transferee's *Home State regulator* a certificate confirming that the transferee will meet the *Home State's* solvency margin requirements (if any) after the transfer.
- 18.2.26 G The transferor will need to provide the *FSA* with the information that the *Home State regulator* requires from *FSA*. This information includes:
- (1) the transfer agreement or a draft, with:
    - (a) the names and addresses of the transferor and transferee; and
    - (b) the *classes of insurance business* and details of the nature of the risks or commitments to be transferred;
  - (2) for the business to be transferred (both before and after reinsurance):
    - (a) the amount of technical provisions;
    - (b) the amount of *premiums* (in the most recent financial period); and
    - (c) for *general insurance business*, the *claims* incurred (in the most recent financial period);
  - (3) details of assets to be transferred;
  - (4) details of any guarantees (including reinsurance), whether provided by the transferor or a third party, to protect the provisions for the business transferred against deterioration; and
  - (5) the *states of the risks* or the *states of the commitments* being transferred.
- 18.2.27 G If the transferee is not (and will not be) *authorised* and will be neither an *EEA firm* nor a *Swiss general insurance company*, then the *FSA* will need to consult its insurance supervisor in the place where the business is to be transferred. The *FSA* will need confirmation from this supervisor that the transferee will meet his solvency margin requirements there (if any) after the transfer.
- 18.2.28 G If the transferor is an *UK insurer* and the business to be transferred includes business carried on from a branch in another *EEA State*, then the *FSA* has to consult the *Host State regulator*, who has 3 months to respond. The *FSA* will need to be given the information that the *Host State regulator* requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information, and describe arrangements for settling *claims* if the branch is to be closed.
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- 18.2.29 G If the transferor is an *UK insurer* and the business to be transferred includes a *long-term insurance contract* (other than reinsurance) for which the *state of the commitment* is an *EEA state* other than the *United Kingdom*, then the *FSA* has to consult the *Host State regulator*. If the transferor is an *UK insurer* and the business to be transferred includes a *general insurance contract* (other than reinsurance) for which the *state of the risk* is an *EEA state* other than the *United Kingdom*, then the *FSA* must consult the *Host State regulator*. The *FSA* will need to be given the information that the *Host State regulator* requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information. It would be helpful (especially for *long-term insurance business*) if a draft of the *scheme report* was also available. The consent of the *Host State regulator* to the transfer is required, unless he does not respond within 3 months.
- 18.2.30 G Where the transferor is an *UK-deposit insurer* and, following the transfer, it will no longer be carrying on *insurance business* in the *United Kingdom*, the *FSA* will need to collaborate with *regulatory bodies* in the other *EEA States* in which it is carrying on business to ensure that effective supervision of the business carried on in the *EEA* continues. The transferor should cooperate with the *FSA* and the other *regulatory bodies* in this process and demonstrate that it will meet the requirements of its regulators following the transfer.

#### **FORM OF SCHEME REPORT**

- 18.2.31 G Under section 109 of the *Act*, a *scheme report* must accompany an application to the court to approve an *insurance business transfer scheme*. This report must be made in a form approved by the *FSA*. The *FSA* would not expect to approve the form of a *scheme report* unless it complies with *SUP 18.2.33G* and would expect to approve the form of a *scheme report* that complies. *SUP 18.2.32G* and *SUP 18.2.34G* to *SUP 18.2.41G* provide additional *guidance* for the *independent expert*.
- 18.2.32 G There may be matters relating to the scheme or the parties to the transfer that the *FSA* wishes to draw to the attention of the *independent expert*. The *FSA* may also wish the report to address particular issues. The *independent expert* should therefore contact the *FSA* at an early stage to establish whether there are such matters or issues. The *independent expert* should form his own opinion on such issues, which may differ from the opinion of the *FSA*.
- 18.2.33 G The *scheme report* should comply with the applicable rules on expert evidence and contain the following information:
- (1) who appointed the *independent expert* and who is bearing the costs of that appointment;
  - (2) confirmation that the *independent expert* has been approved or nominated by the *FSA*;
  - (3) a statement of *independent expert's* professional qualifications and (where appropriate) descriptions of the experience that fits him for the role;
  - (4) whether the *independent expert* has, or has had, direct or indirect interest in any of the parties which might be thought to influence his independence, and details of any such interest;
  - (5) the scope of the report;
  - (6) the purpose of the scheme;
  - (7) a summary of the terms of the scheme in so far as they are relevant to the report;
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- (8) what documents, reports and other material information the *independent expert* has considered in preparing his report and whether any information that he requested has not been provided;
- (9) the extent to which the *independent expert* has relied on:
  - (a) information provided by others; and
  - (b) the judgment of others;
- (10) the people on whom the *independent expert* has relied and why, in his opinion, such reliance is reasonable;
- (11) his opinion of the likely effects of the scheme on *policyholders* (this term is defined to include *persons* with certain rights and contingent rights under the *policies*), distinguishing between:
  - (a) transferring *policyholders*;
  - (b) *policyholders* of the transferor whose contracts will not be transferred; and
  - (c) *policyholders* of the transferee;
- (12) what matters (if any) that the *independent expert* has not taken into account or evaluated in the report that might, in his opinion, be relevant to *policyholders'* consideration of the scheme; and
- (13) for each opinion that the *independent expert* expresses in the report, an outline of his reasons.

18.2.34 G The purpose of the *scheme report* is to inform the court and the *independent expert* therefore has a duty to the court. However reliance will also be placed on it by *policyholders*, by others affected by the scheme and by the *FSA*. The amount of detail that it is appropriate to include will depend on the complexity of the scheme, the materiality of the details themselves and the circumstances. For instance where it is clear that no-one will be adversely affected by the transfer, a simple explanation for this conclusion plus the details required by *SUP 18.2.33G* might be an adequate report.

18.2.35 G The summary of the terms of the scheme should include:

- (1) a description of any reinsurance arrangements that it is proposed should pass to the transferee under the scheme; and
- (2) a description of any guarantees or additional reinsurance that will cover the transferred business or the business of the transferor that will not be transferred.

18.2.36 G The *independent expert's* opinion of the likely effects of the scheme on *policyholders* should:

- (1) include a comparison of the likely effects if it is or is not implemented;
- (2) state whether he considered alternative arrangements and, if so, what;
- (3) where different groups of *policyholders* are likely to be affected differently by the scheme, include comment on those differences he considers may be material to the *policyholders*; and
- (4) include his views on:

- (a) the effect of the scheme on the security of *policyholders'* contractual rights, including the likelihood and potential effects of the insolvency of the *insurer*;
- (b) the likely effects of the scheme on matters such as investment management, new business strategy, administration, expense levels and valuation bases in so far as they may affect:
  - (i) the security of *policyholders'* contractual rights;
  - (ii) levels of service provided to *policyholders*; or
  - (iii) for *long-term insurance business*, the reasonable expectations of *policyholders*; and
- (c) the cost and tax effects of the scheme, in so far as they may affect the security of *policyholders'* contractual rights, or for *long-term insurance business*, their reasonable expectations.

18.2.37 G The *independent expert* is not expected to comment on the likely effects on new *policyholders*, that is, those whose contracts are entered into after the effective date of the transfer.

18.2.38 G For any mutual *company* involved in the scheme, the report should:

- (1) describe the effect of the scheme on the proprietary rights of members of the *company*, including the significance of any loss or dilution of the rights of those members to secure or prevent further changes which could affect their entitlements as *policyholders*;
- (2) state whether, and to what extent, members will receive compensation under the scheme for any diminution of proprietary rights; and
- (3) comment on the appropriateness of any compensation, paying particular attention to any differences in treatment between members with voting rights and those without.

18.2.39 G For a scheme involving *long-term insurance business*, the report should:

- (1) describe the effect of the scheme on the nature and value of any rights of *policyholders* to participate in profits;
- (2) if any such rights will be diluted by the scheme, how any compensation offered to *policyholders* as a group (such as the injection of funds, allocation of shares, or cash payments) compares with the value of that dilution, and whether the extent and method of its proposed division is equitable as between different classes and generations of *policyholders*;
- (3) describe the likely effect of the scheme on the approach used to determine:
  - (a) the amounts of any non-guaranteed benefits such as bonuses and *surrender values*; and
  - (b) the levels of any discretionary charges;
- (4) describe what safeguards are provided by the scheme against a subsequent change of approach to these matters that could act to the detriment of existing *policyholders* of either *firm*;



- (5) include the *independent expert's* overall assessment of the likely effects of the scheme on the reasonable expectations of *long-term insurance business policyholders*;
- (6) state whether the *independent expert* is satisfied that for each *firm* the scheme is equitable to all classes and generations of its *policyholders*; and
- (7) state whether, in the *independent expert's* opinion, for each relevant *firm* the scheme has sufficient safeguards (such as principles of financial management or certification by the *appointed actuary*) to ensure that the scheme operates as presented.

18.2.40 G Where the transfer forms part of a wider chain of events or corporate restructuring, it may not be appropriate to consider the transfer in isolation and the *independent expert* should seek sufficient explanations on corporate plans to enable him to understand the wider picture. Likewise he will need information on the operational plans of the transferee and, if only part of the business of the transferor is transferred, of the transferor. These will need to have sufficient detail to allow him to understand in broad terms how the business will be run. He would not normally be expected to assess the adequacy of systems and controls in detail.

18.2.41 G A transfer may provide for benefits to be reduced for some or all of the *policies* being transferred. This might happen if the transferor is in financial difficulties. If there is such a proposal, the *independent expert* should report on what reductions he considers ought to be made, unless either:

- (1) the information required is not available and will not become available in time for his report, for instance it might depend on future events; or
- (2) otherwise, he is unable to report on this aspect in the time available.

Under such circumstances, the transfer might be urgent and it might be appropriate for the reduction in benefits to take place after the event, by means of an order under section 112 of the *Act*. The *FSA* would wish to consider the fairness of any such reduction and section 113 allows the court to appoint an independent *actuary* to report to the *FSA* on any such post-transfer reduction in benefits.

#### **NOTICE PROVISIONS**

18.2.42 G Under the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) Regulations 2001 (SI 2001/[number to be inserted later]), unless the court directs otherwise, notice of the application must be sent to all *policyholders* of the parties. It may also be appropriate to give notice to others affected, in particular to:

- (1) reinsurers of the transferor where it is proposed that benefits or liabilities under their contracts should pass to the transferee; and
- (2) anyone with an interest in the *policies* being transferred who has notified the transferor of their interest.

18.2.43 G The regulations referred to in *SUP* 18.2.42G require that notice of the application must be published in:

- (1) the London, Edinburgh and Belfast Gazettes; and
- (2) unless the court directs otherwise, in:

- (a) two national newspapers in the *United Kingdom*; and
- (b) in two national newspapers in any other *EEA State* that is the *state of the risk* or the *state of the commitment*.

Wider publication may be appropriate in some circumstances (especially if not all *policyholders* are sent notices).

- 18.2.44 G The regulations referred to in *SUP 18.2.42G* require that the *FSA* approves in advance the notices sent to *policyholders* and published in the press.
- 18.2.45 G Where a transfer involves *members* of *Lloyd's* as transferor or transferee, any notice requirements of the *Society* will also apply.
- 18.2.46 G The *FSA* is entitled to be heard by the court on any application for a transfer. A consideration for the *FSA* in determining whether to oppose a transfer would be its view on whether adequate steps had been taken to tell *policyholders* about the transfer and whether they had adequate information and time to consider it. The *FSA* would not normally consider adequate a period of less than six weeks between sending notices to *policyholders* and the date of the court hearing. Therefore it would be sensible, before requesting the court for a waiver of the publication requirements or the requirement to send statements direct to *policyholders*, to consult the *FSA* on its views about what waivers might be appropriate and what substitute arrangements might be made. The *FSA* will take into account the practicality and costs of sending notices to *policyholders* (especially for *firms* in financial difficulty), the likely benefits for *policyholders* of receiving notices and the efficacy of other arrangements proposed for informing *policyholders* (including additional advertising or, where appropriate, electronic communication). For instance, the *FSA* would be unlikely to object to a transfer on the grounds that *policyholders* had not been sent notices, if cover for the *policies* concerned had expired and the probability of them making a *claim* was so small as to make the sending disproportionately expensive (particularly if there had been additional advertising). A *firm* may not be able to send notices to some or all of its *policyholders*, because it does not have their address, or may not even know their identity. This situation is not uncommon for business written through brokers or other agents. In such a case, alternative ways of informing *policyholders* need to be considered.
- 18.2.47 G As the consent (or presumed consent) of the *Host State* is required for a transfer covering contracts for which another *EEA State* is the *state of the risk* (for *general insurance business*) or the *state of the commitment* (for *long-term insurance business*), it is advisable to obtain the consent of *regulatory body* in the *Host State* to any waiver of publication in that state. The approval of the court will still be required.

#### **STATEMENT TO POLICYHOLDERS**

- 18.2.48 G It would normally be appropriate to include with the notice referred to in *SUP 18.2.42G* a statement setting out the terms of the scheme and containing a summary of the *scheme report*. Ideally every recipient should understand in broad terms from the summary how the scheme is likely to affect him. This objective will be most nearly achieved if the summary is clear and concise while containing sufficient detail for the purpose. A lengthy summary or one that was hard to understand would not be appropriate. Regulations require the *scheme report*, the notice and the statement to be made available to anyone requesting them. The internet can be used for this purpose if it is suitable for the *person* making the request.
  - 18.2.49 G Where the transferee is a *friendly society*, the notice should include information about the meeting at which a special resolution in accordance with paragraph 7 of Schedule 12 to the *Friendly Societies Act 1992* is to be voted on, including the date of the meeting, how notice of the meeting is to be given to members and the terms of the special resolution. After the meeting the *friendly society* should inform the *FSA* whether the special resolution has been passed. The court will also need to be informed, so an appropriate way of informing the *FSA* may be to include it in the affidavit to the court.
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- 18.2.50 G The *FSA* should be given the opportunity to comment on the statement referred to in *SUP* 18.2.48G before it is sent, unless the *FSA* has informed the promoters in writing that it does not wish to do so.

### **FSA ASSESSMENT OF SCHEME**

- 18.2.51 G The assessment is a continuing process, starting when the scheme promoters first approach the *FSA* about a proposed scheme. Among the considerations that may be relevant to both the depth of consideration given to, and the *FSA*'s opinion on, a scheme are:
- (1) the potential risk posed by the transfer to the *regulatory objectives*;
  - (2) the purpose of the scheme;
  - (3) how the security of *policyholders*' (who include *persons* with certain rights and contingent rights under the *policies*) contractual rights appears to be affected;
  - (4) how the scheme compares with possible alternatives, particularly those that do not require approval (whether by the court or the *FSA*);
  - (5) how *policyholders*' rights and reasonable expectations appear to be affected;
  - (6) the compensation offered to *policyholders* for any loss of rights or expectations;
  - (7) how for other *persons* (besides *policyholders*) who have an interest in *policies*, their rights and the security of those rights appear to be affected;
  - (8) the opportunity given to *policyholders* to consider the scheme, that is whether they have been properly notified, whether they have had adequate information and whether they have had adequate time to consider that information;
  - (9) the opinion of the *independent expert*;
  - (10) for a transfer that involves *members* of Lloyd's as transferor or transferee, the effect on the *Society*;
  - (11) the views of other *regulatory bodies* consulted in connection with the proposed transfer; and
  - (12) any views expressed by *policyholders*.
- 18.2.52 G The *scheme report* will be an important factor in the view the *FSA* forms on a scheme. The *FSA* will place considerable reliance on the opinions of the *independent expert* and the reasons for them. However it will form its own view taking into account other information and having regard to its *regulatory objectives*.
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- 18.2.53 G The *FSA* is likely to object to a scheme if it concludes that it is unfair to a class of *policyholders*, unless the *policyholders* of that class have approved the scheme on the basis of information the *FSA* considers clear and accurate. *Policyholders* are not required to vote on a scheme but would, for instance, normally vote on a demutualisation or on a scheme of arrangement under the Companies Act 1985. The *FSA* is also likely to object to a scheme if it concludes that it has a material adverse effect on *policyholders'* security. The *FSA* may wish to satisfy itself that questions of systems and controls are properly addressed. There may also be conduct of business issues, particularly if the market has not fully absorbed the impact of the scheme by its effective date. The *FSA* would seek to resolve such issues through discussion with the scheme promoters in advance of the application to the court for approval, giving them the opportunity to amend the scheme or documentation, or otherwise to allay the *FSA's* concerns. Scheme promoters should keep the *FSA* informed to allow this discussion.
- 18.2.54 G The *FSA* may exercise its other powers under the *Act*, if it considers this a more effective method of achieving its *regulatory objectives*.
- 18.2.55 G The *FSA* is not required under its *regulatory objectives* to object to a scheme merely because some other scheme might have been in the better interests of *policyholders*, if the scheme itself is not adverse to their interests. However there may be circumstances where treating *customers* fairly would require a *firm* to consider or to implement an alternative scheme.
- 18.2.56 G Where a transfer involves *members* of Lloyd's as transferor or transferee, the *FSA* will consult the *Society*. Where the business of a *syndicate* is being transferred, the transfer involves all *members* participating in the relevant *syndicate years*.
- 18.2.57 G Regulations require that copies of the application to the court, the *scheme report* and the statement for *policyholders* referred to in SUP 18.2.48G are also given to the *FSA*. This enables the *FSA* to consider these and determine whether it wishes to be heard by the court. It might assist the *FSA* if these items were given to the *FSA* in draft, in the first instance. This would enable:
- (1) the *FSA* to seek clarification before the documents were finalised; and
  - (2) if the promoters so choose, allow them to amend the scheme to meet any concerns of the *FSA*.
- 18.2.58 G For *long-term insurance business*, the affidavit evidence to the court would normally include copies of reports on the transfer by the *appointed actuaries* of both *firms*, which should be provided to the *FSA* at an early stage. SUP 4.3.17R(4) requires a *firm* to consult its *appointed actuary* about the likely effect of material changes in its business plans on rights and reasonable expectations of *long-term insurance business policyholders*. A transfer would be material unless the liabilities transferred were not material relative to the total liabilities of the *firm*. The advice on a transfer would normally be in the form of a formal report by the *appointed actuary*.
- 18.2.59 G The scheme promoters should advise the *FSA* about any material representations made to them in response to the *transfer scheme*. Where it is proposed that reinsurance arrangements should pass to the transferee under the scheme, the *FSA* should also be informed about the steps being taken to consult with, or seek the consent of, the reinsurers and the reactions received.
- 18.2.60 G The court is likely to wish to know the *FSA's* opinion on the scheme and, if the *FSA* does not intend to be heard, the affidavit may include a summary of the views expressed by the *FSA*. The applicants to the court should provide the *FSA* with a copy of all the affidavit evidence that they intend to submit to the court.
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## 18.3 Insurance business transfers outside the United Kingdom

### PURPOSE

- 18.3.1 G Under section 115 of the *Act*, the *FSA* has the power to give a certificate confirming that a *firm* possesses any *required minimum margin*, to facilitate an *insurance business* transfer to the *firm* under overseas legislation from a firm authorised in another *EEA State* or from a *Swiss general insurance company*. This section provides *guidance* on how the *FSA* would exercise this power and on related matters.

### FSA RESPONSE TO PROPOSAL

- 18.3.2 G Under cooperation agreements between *EEA regulators*, if it has serious concerns about the proposed transferee, the *FSA* should inform the *regulatory body* of the transferor within 3 months of the original request from that *regulatory body*. The *FSA* is not obliged to reply, but if it does not, its opinion is taken to be favorable. Although the protocol does not apply to Switzerland, the *FSA* is required to cooperate with the Swiss *regulatory body* and would apply similar principles to a proposed transfer from a *Swiss general insurance company*.
- 18.3.3 G The information that the *regulatory body* of the transferor is required to supply will normally be sufficient for the *FSA* to determine whether the transfer is likely to have a material effect on the transferee.
- 18.3.4 G If the effect of the transfer is not likely to be material and the *FSA* does not already have serious concerns about the transferee, the *FSA* can reply favorably.
- 18.3.5 G If the effect of the transfer may be material, the *FSA* will need to consider whether to request a *scheme of operations* or other information from the proposed transferee to assist in determining whether the likely effect of the transfer is such that the *FSA* should have serious concerns.
- 18.3.6 G If the effect of the transfer may have a material adverse effect on the transferee or the security of *policyholders*, the *FSA* will consider whether it is appropriate to exercise its powers under the *Act* to achieve its *regulatory objectives*.

## 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

- 18.4.2 G *Friendly societies* are encouraged to discuss a proposed transfer or amalgamation with the *FSA*, 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 *EEA States* other than the *United Kingdom*, or for an amalgamation where additional procedures are required.
- 18.4.3 G The *FSA* will want to satisfy itself that after an amalgamation or a transfer the business will be prudently managed and continue to comply with the *Principles*. It may therefore require prudential information to be provided. It may request prudential information at an early stage to provide itself with adequate time to assess the information.
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- 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 *required minimum margin*. Where the conditions of 87(1) and 87(3) are met the *FSA* 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 *FSA* 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* 18.4.13G) and the full report is required to be made available to anyone on payment of a reasonable fee. The general principles in *SUP* 18.2.32G to *SUP* 18.2.40G apply to the independent *actuary's* report.
- 18.4.6 G Under the Friendly Societies Act 1992 the *FSA* may not confirm a transfer of engagements unless it is satisfied that the transfer is in the interests of the members of each *friendly society* participating in the transfer (see *SUP* 18.4.25G(2)(b)). It 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* 18.4.11G and *SUP* 18.4.12G 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 *FSA* 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 *FSA* 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 IV of the *Act*. The *FSA* will need time before confirming a transfer to consider whether any necessary *permission* or variation should be given. If the transferee is an *EEA firm* or a *Swiss general insurance company*, then confirmation will be needed from its *Home State regulator* that it meets the *Home State's* solvency margin requirements (see *SUP* 18.4.25G(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 *FSA* approval, the *FSA* will take the statement into account when considering whether to confirm the amalgamation or transfer. A *friendly society* will therefore find it helpful to consult the *FSA* about the content of such a statement.
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## FSA DISCRETION

- 18.4.11 G The *FSA* 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 *FSA* will wish to satisfy itself 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 *FSA* is unlikely to exercise this discretion unless the transferee is significantly larger than the business to be transferred.
- 18.4.12 G The *FSA* 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 *FSA* may direct that the summary is to be provided separately if inclusion appears impractical.
- 18.4.14 G The financial information provided under *SUP* 18.4.13G 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* 18.4.15G to *SUP* 18.4.18G 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 *FSA* 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, *required minimum margin* and free assets) for each participant.
- 18.4.18 G The *FSA* 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:
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- (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 *FSA* may require the statement to include any other matter. The *FSA* would normally require inclusion of the terms on which the amalgamation or the transfer of engagements is to be made.
- 18.4.21 G The statement should be clearly separate from other information sent to members. It has to be approved by the *FSA* 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 Ann 1G 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 *FSA* 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 *FSA*. If the *FSA* confirms a transfer, then it 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 *FSA* confirms an amalgamation, it will register the successor society. All the property, rights and liabilities pass on the transfer date specified by the *FSA*.

- 18.4.24 G For a *directive friendly society*, if the transfer or amalgamation includes *policies* where the *state of the risk* or the *state of the commitment* is an *EEA State* other than the *United Kingdom*, consultation with the *Host State regulator* is required and *SUP* 18.2.25G to *SUP* 18.2.29G apply (for an amalgamation they apply as if the business of the amalgamating societies is to be transferred to the successor society). Paragraph 6(1) of Schedule 15 to the Friendly Societies Act 1992 requires publication of the application to the *FSA* for confirmation of an amalgamation or transfer and the *FSA* may require the notice of the application to be published in two national newspapers in the *Host State*.
- 18.4.25 G The criteria that the *FSA* 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 *FSA* 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* 18.4.12G and *SUP* 18.4.27G);
- (2) the *FSA* must be satisfied that:
- (a) the transferee or successor society will have any *permissions* necessary under Part IV of the *Act*;
  - (b) for a transfer, it is in the interests of the members of each *friendly society* participating in it (see *SUP* 18.4.6G); and
  - (c) for a *directive friendly society* where a transfer includes *policies* where the *state of the risk* or the *state of the commitment* is an *EEA State* other than the *United Kingdom*, the *Host State regulator* has been notified of the transfer and has consented or has not refused consent to the transfer; and
- (3) for a transfer, the transferee possesses the *required minimum margin* after taking the proposed transfer into account or, where it is not required to maintain a *required minimum margin*, possesses an excess of assets over liabilities (for a transferee that is a *Swiss general insurance company* or an *EEA firm*, this is evidenced by a certificate from its *home state regulator*).

18.4.26 G If *authorisation* or a *Part IV permission* is needed, the *FSA* 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. As part of the *regulatory objective* to protect *consumers*, the *FSA* may consider whether an amalgamation is in the interests of members.

18.4.27 G The *FSA* 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 *FSA* 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 *FSA* 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 *FSA* 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 *FSA* by the same date.
- 18.4.30 G The *FSA* 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 *FSA*.
- 18.4.31 G The *FSA* expects 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 *FSA* in confidence, the *FSA* will balance any disadvantage this might cause interested parties in making representations against the commercial damage that publication of the documents might cause, and 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 *FSA* in advance to enable it to make appropriate arrangements.
- 18.4.33 G The hearing referred to in *SUP* 18.4.30G will be at a time and place that will be notified to the participants and will be conducted by *FSA* representatives. The hearing may last longer than one day and may be adjourned. The *FSA* 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 *FSA* 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 *FSA* representatives, the press and the general public will then be admitted, within the limits of the space available. However, the *FSA* 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 *FSA* 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;
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- (4) the other participants will be invited to speak to their representations. The *FSA* 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 *FSA* representatives consider that necessary to enable facts to be checked or additional information to be obtained.
- 18.4.37 G The *FSA* 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.
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**SUP 18 Annex 1G – Example of Schedule 15 statement**

**Transfer/Amalgamation of [Society A] to/with [Society B]**

Proposed effective date:

**Comparative financial positions**

(a) Balance Sheet as at 31 December 20--

	Society A	Society B
<b>ASSETS</b>		
Land and buildings (4)		
Government securities		
Equities		
Other investments (6)		
Fixed assets		
Other assets		
Cash at bank and in hand		
	-----	-----
	-----	-----
<b>LIABILITIES</b>		
Benefit funds [technical provisions] (7)		
[Management fund]		
Other liabilities and provisions		
Reserve funds [Reserves] (8)		
	-----	-----
	-----	-----

**NOTES**

(1) The above figures are extracted from the audited accounts [unaudited accounts] of [Society A and Society B] for the year [period] ended:

(2) There has been no significant change in the financial position of the [participants] [except for ].

(3) The future capital commitments of [the participants] are:  
[None of [the participants] has any significant future capital commitments.]

(4) Land and buildings have been brought into account on the following bases:

(include statement of any differences in accounting policies and where material any estimated financial effects)

(5) Investments have been brought into account on the following bases:

(include statement of any differences in accounting policies and where material any estimated financial effects)

(6) Other investments comprise:

(include statement of any differences in accounting policies and where material any estimated financial effects)

(7) Benefit Funds [Technical Provisions] comprise:

(include statement of any differences in accounting policies and where material any estimated financial effects)

(8) Reserve Funds [Reserves] comprise:

(9) The membership at [ ] and premium income received during [ ] for each [participant] were:

(10) Brief summary of the financial position of each [participant] as shown in the last actuarial investigation:

(11) Summary of independent actuary's report under section 88 of the Friendly Societies Act 1992:

(12) The interests of committee members of the [participants] in the transfer [amalgamation] are:

(13) Proposed compensation to be paid to committee members and[/or] to other officers is:

(14) The terms of the transfer[amalgamation] are:

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**Annex D**  
**SUP Schedule 5 (Rights of action for damages)**

**Schedule 5**  
**Rights of actions for damages**

**G**

1. The table below sets out the *rules* in *SUP* contravention of which by an *authorised person* may be actionable under section 150 of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.
2. If a “Yes” appears in the column headed “For private person?”, the *rule* may be actionable by a “*private person*” under section 150 (or, in certain circumstances, his fiduciary or representative). A “Yes” in the column headed “Removed” indicates that the *FSA* has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
3. The column headed “For other person?” indicates whether the rule is actionable by a *person* other than a *private person* (or his fiduciary or representative). If so, an indication of the type of *person* by whom the *rule* is actionable is given.

**Actions for damages: Supervision manual**

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 150		
			For private person?	Removed?	For other person?
All <i>rules</i> in <i>SUP</i> with the status letter “E”			No	No	No
3	8	All <i>rules</i> in the section	No	No	No
3	9	All <i>rules</i> in the section	No	No	No
3	10	All <i>rules</i> in the section	No	No	No
4	3	13	No	No	No
4	3	20	No	No	No
4	4	7	No	No	No
4	4	9	No	No	No
4	5	All <i>rules</i> in the section	No	No	No
10	All <i>rules</i> in sections SUP 10.1 to SUP 10.10		No	No	No
All other <i>rules</i> in <i>SUP</i>			Yes	No	No

**Annex E**  
**SUP Schedule 6 (Rules that can be waived)**

**Schedule 6**  
**Rules that can be waived**

**G**

The *rules* in *SUP* can be *waived* by the *FSA* under section 148 of the *Act* (Modification or waiver of rules), except for:

- (a) the *rules* in the transitional provisions relating to written concessions to the extent that those *rules* relate to other *rules* which cannot be *waived*;
- (b) the *rules* in *SUP* 3.8 to *SUP* 3.10 (Auditors) and the transitional *rules* relevant to those *rules* (and the *rules* in *SUP* 3.1 (Application) to the extent that those *rules* apply to an auditor rather than to a *firm*);
- (c) the *rules* in *SUP* 4.3 to *SUP* 4.5 (Actuaries) which apply to an actuary rather than to a *firm* (and the *rules* in *SUP* 4.1 (Application) to the extent that those *rules* apply to an actuary rather than to a *firm*);
- (d) the *rules* in *SUP* 10.2 to *SUP* 10.10 (Approved persons) (and the *rules* in *SUP* 10.1 (Application) to the extent that those *rules* apply or modify the *rules* in *SUP* 10.2 to *SUP* 10.10);
- (e) the following rules in *SUP* 13 (Exercise of passport rights by UK firms): *SUP* 13.5.1R, *SUP* 13.5.2R, *SUP* Ann 1R, *SUP* Ann 2R and *SUP* Ann 3R;
- (f) the *rules* in *SUP* 20 (Fees).