

SUPERVISION MANUAL (AMENDMENT NO 11 AND CONSEQUENTIAL AMENDMENTS TO THE HANDBOOK) INSTRUMENT 2003

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (the "Act"):
 - (a) section 138 (General rule-making powers);
 - (b) section 148(3) (Modification or waiver of rules);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 250(4) and (5) (Modification or waiver of rules);
 - (f) section 294(2) (Modification or waiver of rules); and
 - (2) regulation 7(3) and (4) of the Open-Ended Investment Companies Regulations 2001 (Modification or waiver of rules).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 March 2003.

Amendments to the Supervision manual

- D. The Supervision manual is amended:
- (1) by inserting, as SUP 8 Annex 2D, the provisions in Annex A to this instrument; and
 - (2) in accordance with Annex B to this instrument.

Amendments to the Credit unions sourcebook

- E. The Credit unions sourcebook is amended in accordance with Annex C to this instrument.

Citation

- F. This instrument may be cited as the Supervision Manual (Amendment No 11 and Consequential Amendments to the Handbook) Instrument 2003.

By order of the Board
16 January 2003

Annex A

Amendments to the Supervision manual

After SUP 8 Ann 1G, insert the following new annex:



SUP 8 Ann 2D (see SUP 8.3.3D)

Application form for a waiver or modification¹

Before completing this application form, you may find it helpful to discuss the application with your usual supervisory contact, or usual contact in Corporate Authorisation, at the *FSA*. However, you must still ensure that all relevant information is included in this application form.

Firm details		
1	Name of <i>firm</i> . ²	
2	FSA firm reference no.	
3	Contact point at <i>firm</i> Name: Position: Address: Telephone number: Fax number: E-mail address:	
Details of <i>waiver</i> sought		
4	Are you applying for a variation of an existing <i>waiver</i> ? If so, give the direction reference number. ³	
5	<i>Rule(s)</i> to which this application relates.	
6	Are you applying for the <i>rule</i> to be waived completely, or for a modification of the <i>rule</i> ? If a modification, provide a draft of the modification sought.	
7	Detail any special requirements. ⁴	
Details of research undertaken		
8	Confirm that you have checked the <i>waivers</i> published by the <i>FSA</i> for any precedent. If your application is based on a precedent, give the Direction reference number. ⁵	I confirm there is/is not a published precedent Published precedent Direction reference number (if applicable):
9	Is your application under section 148, 250 or 294 of the <i>Act</i> , or under regulation 7 of the <i>OEIC Regulations</i> ? ⁶	
10	Confirm that the <i>rule(s)</i> can be waived. ⁷	Confirmed/not relevant
11	Set out any matters that you believe would be relevant to assessing whether the <i>waiver</i> would be compatible with European directives. ⁸	
Reasons why the <i>waiver</i> should be given		
12	Give a full and clear explanation of why you want the <i>waiver</i> .	



13	Give a full and clear explanation of why you consider that the statutory tests are satisfied. ⁹	Your compliance with the <i>rules</i> , or the <i>rules</i> as unmodified, would: <ul style="list-style-type: none">• be unduly burdensome because:
		OR <ul style="list-style-type: none">• not achieve the purpose for which the <i>rules</i> were made because:
		AND The <i>waiver</i> would not result in undue risk to <i>persons</i> whose interests the <i>rules</i> are intended to protect because:
Publication		
14	Are you content for the <i>waiver</i> to be published? If no, state your reasons. ¹⁰	

Warning: Knowingly or recklessly giving the *FSA* information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). *SUP* 15.6.1R and *SUP* 15.6.4R require an *authorised person* to take reasonable steps to ensure the accuracy and completeness of information given to the *FSA* and to notify the *FSA* immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FSA*. It should not be assumed that information is known to the *FSA* merely because it is in the public domain or has previously been disclosed to another regulatory body. If there is any doubt about the relevance of information, it should be included.

Declaration and signature¹¹

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.

Signature of authorised signatory:
Name:
Position held:

Date:

Declaration and signature if a third party is named¹²

If the *waiver* will name a third party (for example, a modification disapplying for a named individual the *rule* in *TC* requiring an examination to be passed), the third party must sign below.

I confirm that the information in this form that concerns my circumstances is accurate and complete to the best of my knowledge and belief. I also confirm that I am content for the *waiver* to be published, unless otherwise indicated in box 14 of this form.

Signature of named third party:
Name:

Date:



Instructions for submission

When completed, submit this application form in line with *SUP 15.7.4R* to *SUP 15.7.9G*. In particular, you may send applications by e-mail (which the *FSA* prefers) or by post, addressed to your usual supervisory contact or usual contact in Corporate Authorisation. The address for postal submission is:

- (1) The Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
(If your usual supervisory contact or usual contact in Corporate Authorisation at the *FSA* is based in London)
- (2) The Financial Services Authority
Sutherland House
108-114 Dundas Street
Edinburgh EH3 5DQ
(If your usual supervisory contact at the *FSA* is based in Edinburgh)

1. Defined terms used in the text are shown in italics. Definitions can be found in the Handbook Glossary on the *FSA*'s website (<http://www.fsa.gov.uk>).
2. If the applicant is not a *firm*, for example an applicant for a *Part IV permission*, give its name and indicate that it is not an *authorised person*. There is no need to give the *FSA* firm reference number in the next question. If the application is submitted by more than one *firm* (for example more than one *firm* in a *group*), the names of each *firm* must be given. All *FSA* firm reference numbers should be given in the next question and, if the form is signed, a single individual can sign the form on behalf of each *firm* if he has authority to do so.
3. Obtain the Direction reference number from the Direction sent to you by the *FSA*.
4. For example, do you need an urgent decision, or is there a specific period for which the *waiver* is required?
5. You can inspect published *waivers* at http://www.fsa.gov.uk/waivers/published_waivers.html.
6. Section 148 of the *Act* is the power used to give most *waivers*. Section 250 of the *Act* and regulation 7 of the *OEIC Regulations* are relevant only for certain *rules* in the Collective Investment Schemes sourcebook (see *SUP 8.2.3G*). Section 294 of the *Act* is relevant only for certain *rules* in the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (see *REC 3.3*).
7. Schedule 6 to each sourcebook and manual of the *Handbook* sets out those *rules* that the *FSA* has the power to *waive* under the *Act*. It does not, however, deal with compatibility with European directives (see next footnote). The exception to this is for *IPRU*, which has no schedule 6. If you are applying for a *waiver* of an *IPRU rule* answer 'not relevant' to this question.
8. The *FSA* cannot give a *waiver* that would be incompatible with the *United Kingdom's* responsibilities under European directives. In many cases, the 'Purpose' section of a chapter or section of the *Handbook* will identify whether the text implements a directive requirement. The *FSA* only expects a *firm* to take reasonable steps in answering this question; what is reasonable will depend on the resources of the *firm*.
9. The *FSA* cannot give a *waiver* unless the statutory tests are satisfied. The tests are set out in section 148(4) of the *Act*, and reproduced in *SUP 8.3.1G*. The tests under sections 250 and 294 of the *Act*, and regulation 7 of the *OEIC Regulations*, are similar. *Firms* need to be aware that both matters ('unduly burdensome' or 'not achieve the purpose'; and 'undue risk') noted require detailed explanation and substantive argument before the application can be processed. Unless there are satisfactory responses to these matters then the *waiver* application may be rejected, or we may require further information.
10. See *SUP 8.6.7G* (Firm's objection to publication).
11. A signature on behalf of the *firm* is not mandatory.
12. In cases where a third party is named, the third party's signature is mandatory. The *FSA* suggests that *firms* submit the form by e-mail and then forward a hard copy signed by the third party.

Annex B

Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

4.1.3R

Table Applicable sections (see SUP 4.1.1R)

(1)	Category of firm	(2)	Applicable sections
(1)	<p>A long term <u>long term insurer</u>, other than:</p> <p style="padding-left: 40px;">(a) a <i>registered friendly society</i> which is a <i>non-directive friendly society</i>; and</p> <p style="padding-left: 40px;">(b) an <i>incorporated friendly society</i> that is a <i>flat rate benefits business friendly society</i>; and</p> <p style="padding-left: 40px;"><u>(c) an incoming EEA firm.</u></p>		SUP 4.1, SUP 4.2, SUP 4.3 and SUP 4.5
(2)	A <i>friendly society</i> , other than a <i>friendly society</i> within (1).		SUP 4.1, SUP 4.2, SUP 4.4 and SUP 4.5

...

8.1.1AG This chapter is relevant to an applicant for a *Part IV permission*, as if that applicant were a *firm*. Where the chapter refers to usual supervisory contact, the applicant should read this as being the usual contact in Corporate Authorisation.

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8.3.3D If a *firm* wishes to apply for a *waiver*, it must ~~apply in writing~~ complete and submit the form in SUP 8 Ann 2D (Application form for a waiver or modification). The application must be given or addressed, and delivered, in the way set out in SUP 15.7.4R to SUP 15.7.9G (Method of notification). ~~The application must include:~~

- (1) ~~the name and FSA firm reference number of the *firm* making the application, and a contact point for the *firm* on the application;~~
- (2) ~~the reference number of the *rule* to which the application relates;~~
- (3) ~~a clear explanation of the *waiver* that is being applied for and the reasons why the *firm* wants it;~~

- ~~(4) details of any special requirements, for example if the *firm* needs a decision urgently, or if there is a specific period for which the *waiver* is required;~~
- ~~(5) relevant facts that support the *firm's* application;~~
- ~~(6) the *firm's* reasons for considering that the conditions in section 148(4) of the Act are satisfied (see SUP 8.3.1G); and~~
- ~~(7) confirmation that the *firm* is content for the waiver to be published or, if not, the reasons, with reference to SUP 8.6.2G, why the firm believes that:

 - ~~(a) it would be inappropriate or unnecessary to publish the *waiver*; or~~
 - ~~(b) the *waiver* should be published without disclosing the identity of the firm (giving details of any possible prejudice to commercial interests).~~~~

8.3.3AG (1) The FSA's preferred method of submission for *waiver* applications is by e-mail.

(2) The form is available on the FSA's website (see http://www.fsa.gov.uk/waivers/application_form).

...

8.3.5AG The FSA will treat a *firm's* application for a *waiver* as withdrawn if it does not hear from the *firm* within 20 *business days* of sending a communication which requests or requires a response from the *firm*. The FSA will not do this if the *firm* has made it clear to the FSA in some other way that it intends to pursue the application.

...

16.1.3R

Table Application of different sections of SUP 16

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		

Note = ~~Section 16.7 applies to~~ Where an *authorised professional firm* which is required by *IPRU(INV)* 2.1.2R(1) to comply with chapter 3, 5, 10 or 13 of *IPRU(INV)*, ~~Section 16.7 applies to such a firm as if it were the relevant firm category in the right hand column of *IPRU(INV)* 2.1R).~~

...

Exceptions: friendly societies and building societies

16.4.10R ...

...

Exception: insurers

16.4.12R An insurer need not submit a report under SUP 16.4.5R to the extent that the information has already been provided to the FSA under IPRU(INS) 9.30R (Additional information on controllers).

...

17.7.8R The reporting systems referred to in SUP 17.7.1R are:

(1) CEDCOM system operated by ~~CEDEL SA, Luxembourg~~ Clearstream Banking AG, Frankfurt;

...

...

17 Ann 2R: Mandatory fields for reporting systems

3 Table The investment identification codes referred to in (1) above are:

CC	CEDEL <u>Clearstream</u> and Euroclear Common Codes	9 Numeric
...		

...

17 Ann 3R: Manual transaction reporting form

1 Table Notes for completion of manual transaction reporting form

...
<p>Security Code Type (O)</p> <p>The valid Security Type Codes are as follows:</p> <p>CC - CEDEL <u>Clearstream</u> and Euroclear Common Codes;</p> <p>...</p>
...

...

Schedule 2

Notification requirements

2 Table

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
SUP 8.3.3D	Waiver <u>Application for a waiver</u>	Name and FSA reference number, reference number of the rule to which the application relates, clear explanation of the waiver and the reasons why the firm wants it, details of any special requirements, relevant facts to support the application, the firm's reasons for considering the waiver criteria are met and confirmation that the firm is content for the waiver to be published or the reasons why the firm believes the waiver should not be published <u>The form in SUP 8 Ann 2D (Application form for a waiver or modification)</u>	Firm seeks a waiver	Before the <i>waiver</i> is required; the <i>FSA</i> will aim to give a <i>waiver</i> decision within 20 <i>business days</i> of receiving the application.

...				
<i>SUP 17</i>	Transaction reporting ...	The fact of intending to use one of the systems specified	Before using one of the reporting systems listed in SUP 17.7.8R: (1) CEDCO M system operated by CEDEL SA, Luxembourg urg <u>Clearstre</u> <u>am</u> <u>Banking</u> <u>AG,</u> <u>Frankfurt</u> ; ...	Before using the system specified
...				

Annex C

Amendments to the Credit unions sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 14.7.6G ~~SUP 8.3.3D states that if a *credit union* wishes to apply for a *waiver*, it must do so ~~in writing~~ to its usual supervisory contact at the *FSA* using the form in SUP 8 Ann 2D (Application for a waiver or modification). ~~The application must include:-~~~~
- ~~(1) the name and FSA reference number of the *credit union* making the application, and a contact point for the *credit union* on the application;-~~
 - ~~(2) the reference number of the *rule* to which the application relates;-~~
 - ~~(3) a clear explanation of the *waiver* that is being applied for and the reasons why the *credit union* wants it;-~~
 - ~~(4) details of any special requirements, for example if the *credit union* needs a decision urgently, or if there is a specific period for which the *waiver* is required;-~~
 - ~~(5) relevant facts that support the *credit union's* application;-~~
 - ~~(6) the *credit union's* reasons for considering that the conditions in *CRED 14.7.5G* are satisfied;-~~
 - ~~(7) any reasons, with reference to *CRED 14.7.13G*, why the *credit union* believes that it would be inappropriate or unnecessary to publish the *waiver*;-~~