

CONTROLLERS AND CLOSE LINKS INSTRUMENT 2004

Powers exercised

- A. The Financial Services Authority makes this instrument 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); and
 - (4) section 182 (1) (Notification).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 December 2004, save for the amendment to SUP 11.2.8G which appears in square brackets, which comes into force on 14 January 2005 pursuant to the Insurance Mediation and Mortgage Mediation, Lending and Administration (Prudential Provisions) Instrument 2004 (FSA 2004/01).

Amendments to the Supervision manual

- D. The Supervision manual is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Controllers and Close Links Instrument 2004.

By order of the Board
18 November 2004

Annex

Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through deleted text. Footnotes do not form part of this instrument, but have been inserted to assist the reader.

- 11.2 Purpose
- ...
- 11.2.2 G The *rules* in SUP 11.4 to SUP 11.6 are aimed at ensuring that the FSA receives information it needs from *firms* to assist the FSA with its responsibility to monitor and, in some cases, give prior approval to *firms' controllers*. ~~These rules also implement certain requirements relating to changes in control that are required under the Investment Services Directive, the Banking Consolidation Directive, the Third Life Directive and the Third Non-Life Directive.~~
- ...
- 11.2.5 G Similarly, the FSA needs to monitor a *firm's* continuing satisfaction of *threshold condition 3* (Close links) (see SUPCOND 2.3), which requires that a *firm's close links* are not likely to prevent the FSA's effective supervision of that *firm*. Accordingly the FSA needs to be notified of any changes in a *firm's close links*. This requirement is contained in SUP 11.9 and implements a requirement of the amending Directive (the *Post BCCI directive*) in relation to *close links*.
- 11.2.6 G Every *firm₂* other than a *firm* listed in SUP 11.1.1R(1) to (6) or a *firm* excluded from the operation of SUP 16.4 or SUP 16.5 by SUP 16.1.3R, is required to submit an annual report on its *controllers* and *close links* as set out in SUP 16.4 and SUP 16.5.
- 11.2.7 G The requirements in SUP 11 implement certain provisions relating to changes in control and close links required under the Single Market Directives. ~~A summary of the notification requirements in this chapter is given in SUP 11Ann1G.~~
- 11.2.8 G An event described in SUP 11.4.2R(1) to (4) [and SUP 11.4.2AR(1) and (2)]¹ is referred to in this chapter as a "change in control".
- ...

¹ This amendment will come into force on 14 January 2005 pursuant to the Insurance Mediation and Mortgage Mediation, Lending and Administration (Prudential Provisions) Instrument 2004 (FSA2004/01). This amendment was made initially to SUP 11.3.2G but this instrument moves this text to SUP 11.2.8G and so the amendment made by FSA 2004/01 is transposed.

11.3 Requirements on controllers or proposed controllers under the Act

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Requirement to notify a proposed change in control

11.3.2 G ~~Part XII Sections 178(1) and 190(1)~~ of the *Act* requires a *person* (whether or not he is an *authorised person*) to notify the *FSA* in writing if he proposes to take a step which would result in his acquiring *control* or increasing or reducing his *control* over a UK domestic firm in a way described in *SUP* 11.4.2R(1) to (4). Failure to notify is an offence under section 191(1) of the *Act* (Offences under this Part). ~~An event described in *SUP* 11.4.2R(1) to (4) is referred to in this chapter as a “change in control”.~~

...

11.3.3 G ~~The notifications referred to in *SUP* 11.3.2G may be given jointly with the firm as described in *SUP* 11.5.8G. [deleted]~~²

~~Prior a~~ Approval of required before acquiring or increasing control

11.3.4 G If a *person* proposes to acquire *control* or increase his *control* over a UK domestic firm in a way described in *SUP* 11.4.2R(1) to (4), he must obtain the *FSA's* approval before doing so. ~~Failure~~ Failure to obtain approval is an offence under section 191(3) of the *Act* (Offences under this Part). The *FSA* has up to three *months* to consider whether to ~~approve~~ approve such a change in *control*; see *SUP* 11.7 for guidance on the approval procedures. ~~A controller or proposed controller should take this period into account when deciding when to give his notification.~~

11.3.5 G The *FSA's* ~~approval~~ approval is not required before a *controller* reduces his *control* over a UK domestic firm.

Pre-notification and approval for fund managers

11.3.5A G The *FSA* recognises that *firms* acting as *investment managers* may have difficulties in complying with the prior notification requirements in sections 178(1) and 190(1) of the *Act* as a result of acquiring or disposing of listed *shares* in the course of that fund management activity. To ameliorate these difficulties, the *FSA* may accept pre-notification of proposed changes in *control*, made in accordance with *SUP* 11.3.5BD, and may grant approval of such changes for a period lasting up to a year.

11.3.5B D The *FSA* may treat as notice given in accordance with sections 178(1) and 190(1) of the *Act* a written notification from a *firm*

² Text moved to *SUP* 11.3.17G

which contains the following statements:

- (1) that the *firm* proposes to acquire and/or dispose of *control*, on one or more occasions, of any *UK domestic firm* whose *shares* or those of its ultimate *parent undertaking* are, at the time of the acquisition or disposal of *control*, *listed* or which are admitted to listing on a *designated investment exchange*;
- (2) that any such acquisitions and/or disposals of *control* will occur only in the course of the *firm's* business as an *investment manager*; and
- (3) that the level of *control* the *firm* so acquires in the pre-approval period will at all times remain less than 20%.

11.3.5C G Where the *FSA* approves changes in *control* proposed in a notice given under *SUP* 11.3.5BD:

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

At that stage, the *FSA* may seek from the *controller* further information, including that which would have been supplied under *SUP* 11.3.7D(2).

Change in control without taking any step

11.3.6 G If a change in *control* occurs without the *person* himself having taken any step (~~for example, because of an increase in the firm's capital~~), he must notify the *FSA* within 14 days of becoming aware of the change (sections 178(2) and 190(2) of the *Act*). Failure to notify is an offence under section 191(2) of the *Act*. Provisions determining when such a notice is treated as being received by the *FSA* are set out in regulation 10(1) of the Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420).

Custodians obtaining control

11.3.6A G The *FSA* considers that a *custodian* or its wholly-owned subsidiary *nominee company*, acting only in that capacity, does not itself take any step for the purposes of sections 178(2) and 190(2) of the *Act* when it becomes the *controller* of a *UK domestic firm*, its *control* of a *UK domestic firm* changes or it ceases to be the *controller* of a *UK domestic firm* as a result of acquiring or disposing of *custody assets* in the form of *shares* in accordance with its *clients'*

instructions.

11.3.6B D For the purposes of sections 178(2) and 190(2) of the *Act* and where there has been more than one change in *control* for each *UK domestic firm* in a fortnightly period, a *custodian* or its wholly-owned subsidiary *nominee company* to which *SUP 11.3.6AG* applies need only notify the *FSA* of its final *control* position for each *UK domestic firm* for that fortnight, so long as it also supplies the highest *control* position for each *UK domestic firm* it obtained during that period.

11.3.6C G Reporting by a *custodian* or its wholly-owned subsidiary *nominee company* does not relieve any other *person* with an interest in any *custody assets* from its *control* notification responsibilities under Part XII of the *Act*.

Form of notification when acquiring or increasing control

11.3.7 D A notification ("notice of *control*") given to the *FSA* by a *person* who is acquiring *control* or increasing his *control* over a *UK domestic firm*, in a way described in *SUP 11.4.2R(1)* to (4), must:

(1) ~~where the in the case of a controller or a proposed controller who~~ is not an *authorised person*, contain ...

(1A) ~~where the controller is a custodian or a nominee company notifying under SUP 11.3.6AD, comply with that direction;~~

(2) ~~where the controller or proposed controller is any other authorised person in all other cases, contain the information required in those sections of Controllers Form A (SUP 11 Annex 4D) which deal with details of the proposed change in control and the persons involved in the notification;~~ sections 1, 5 and 6; and

(3) ...

...

11.3.11 G The *FSA*, for administrative reasons, expects notifications within *SUP 11.3.7D* to be given on Controllers Form A or Controllers Form B, as appropriate. If notifications are not made on these forms the applicant must inform the *FSA* of the reasons for not using them. ~~Copies of the Controllers Form A and Controllers Form B are available on the *FSA's* website at www.fsa.gov.uk. Regulations 7 to 9 of the Financial Services and Markets Act 2001 (Services of Notices) Regulations 2001 (SI 2001/1420) govern the manner in which a notice of *control* may be submitted. In summary, it should be delivered or *posted* to the *FSA's* address as shown on the Forms, and will be treated as given when it is received by the *FSA*. It should not be sent by fax or electronic mail.~~

11.3.12 G If a *controller* or proposed *controller* considers that the requirements in SUP 11.3.7D to SUP 11.3.9D are not appropriate to his circumstances, for example;

- (1) if the *control* is ~~to be held~~ temporary through a trust; or
- (2) if Form B is required (under SUP 11.3.8D) in relation to:
 - (a) an individual who is an *approved person*; or
 - (b) a partnership of which one or more of the partners are bodies corporate;

he should consult the *FSA*. The *FSA* has power, under section 182(3) of the *Act* (Notification), to amend those requirements if it considers it appropriate to do so.

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11.3.14 G ~~If item 1.05 of Controllers Form A is answered in the affirmative,~~ The *FSA* may be obliged to consult regulatory authorities in other *EEA States* before approving the change in *control* or giving a *warning notice* where:

- (1)
 - (a) the "target" UK domestic firm is an investment firm;
 - (b) the controller or proposed controller is an ISD investment firm or the parent undertaking of an ISD investment firm; and
 - (c) as a result of the acquisition or proposed acquisition, the controller or proposed controller would become the parent undertaking of the UK domestic firm; or
- (2)
 - (a) the "target" UK domestic firm has permission to accept deposits;
 - (b) the controller or proposed controller is a BCD credit institution or the parent undertaking of a BCD credit institution; and
 - (c) as a result of the acquisition or proposed acquisition, the controller or proposed controller would become the parent undertaking of the UK domestic firm.

Form of notification when reducing control

11.3.15 G A notification given to the *FSA* by a *person* who is reducing his *control* over a *UK domestic firm*, in a way described in SUP 11.4.2R(1) to (4), must, in accordance with section 190(4) of the *Act* (Notification):

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

Notification when change in control occurs

- 11.3.16 G A *person* who is under a duty to notify the *FSA* of a proposed change in *control* is also required to notify the *FSA* when the relevant change in *control* has occurred (sections 178(3) and 190(3) of the *Act*). ~~The notification may be given jointly with the firm as described in SUP 11.6.6G. If a person has reduced his control, section 190(4) of the Act requires that the notification should provide details of the extent of control retained (if any).~~

Joint and shared notifications

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

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- 11.5 Form of notification by firms

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- 11.5.3 G In determining what the *FSA* would reasonably expect notice of in accordance with row (4) in SUP 11.5.1R, a ~~firm~~ *firm* should have regard, in particular, to the following matters set out in items 1.03 to 1.07 and 6.02 of Controllers Form A (SUP 11 Annex 4D) to the extent that the *firm* is aware of such matters them:

- (1) whether the *controller* intends to make any significant changes to the *firm*'s or *firms*' regulated activities, business plan or strategy as a result of the change in *control*;
- (2) whether the *controller* intends any restructuring either in terms of the legal form of the *firm*(s) or in its or their borrowings, capital restructuring or financing arrangements;
- (3) whether the *FSA* is obliged to consult with regulatory authorities in other *EEA States* (see SUP 11.3.14G);
- (4) in the case of a share acquisition or similar, how it is to be financed;
- (5) whether the *controller* has any interests which may conflict with its role as *controller* of the *UK domestic firm*.

Firms are also reminded of the circumstances set out in SUP 15.3.8G (Communication with the *FSA* in accordance with

Principle 11) which may arise on a change in *control* and which should also be notified.

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11.7 Acquisition or increase of control: approval procedures

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11.7.3 G Alternatively, the *FSA* may decide to approve the proposed acquisition or increase of *control* subject to such conditions as it considers appropriate, having regard to the *FSA's* duty to ensure that the *firm* concerned will satisfy, and continue to satisfy, the *threshold conditions* (section 185 of the *Act*).

(1) If the *FSA* proposes to approve subject to conditions, it must give a *warning notice*.

(2) If the *FSA* decides to proceed to approve subject to conditions, it must give a *decision notice*.

...

11.7.7 G (1) If the *FSA* proposes to object, it must issue a *warning notice*.

(2) If the *FSA* decides to proceed with its proposed objection, it must issue a *decision notice*.

(3) If the *FSA* considers that the approval requirements would be met if a particular step were taken or not taken, the *decision notice* must identify that step (section 186(4) of the *Act*).

11.7.8 G ~~As well as objecting when satisfied that the approval requirements are not met,~~ The *FSA* may also object if it has not received sufficient information from either the *controller* or the *firm* to satisfy itself that the approval requirements are met.

...

The *FSA's* timeframe for responding to a notification

11.7.10 G If the *FSA* receives a valid notification from a *controller* or proposed *controller* (~~whether a joint notification in accordance with SUP 11.5.8G or otherwise~~), the *FSA* must respond within three ~~months~~ ~~regardless of when it receives a notification from the *firm*~~ (section 183(1) of the *Act*). The response from the *FSA* will be either an approval notice or a *warning notice*.

11.7.11 G (1) ~~Alternatively, the *FSA* may receive a notification from the *firm* but not from the *controller* or proposed *controller* or may otherwise become~~ Where the *FSA* becomes aware of a possible breach by the *controller* or proposed *controller* of his

obligations under section 178(1) or (2) of the *Act* (Obligation to notify the Authority); ~~it the FSA~~ may require the *person* concerned to provide additional information or *documents* (section 188(4) of the *Act*).

- (2) If the *FSA* is satisfied that a breach has occurred, but is not satisfied that the approval requirements are met, the *FSA* may give a *warning notice* to the *controller* or proposed *controller* (section 187(1) and 188(1) of the *Act*).
- (3) Alternatively, the *FSA* may retrospectively approve the change ~~of~~ *control* as if a notification had been received from the *controller* or proposed *controller* (section 187(2) of the *Act*).

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The FSA's right to object to existing controllers

- 11.7.14 G If a *controller* fails to give a notification under section 178(3) of the *Act* on acquiring or increasing *control*, ...

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11.9 Changes in close links

Requirement to notify changes in close links

- 11.9.1 R A *firm* must notify the *FSA* ~~immediately it becomes aware~~ that it has become or ceased to be *closely linked* with any *person*. The notification must include the information set out in SUP 16.5.4R(4).

...

Timing of notification requirement

- 11.9.4 R The *firm* must make a notification to the *FSA* under SUP 11.9.1R:
 - (1) as soon as reasonably practicable and no later than one *month* after it becomes aware that it has become or ceased to be *closely linked* with any *person*; or
 - (2) where a *firm* has elected to report on a *monthly* basis, within fifteen *business days* of the end of each *month* and:
 - (a) including the information set out in SUP 16.5.4R(4) for that *month*; and
 - (b) if there is no *person* required to be included in the notification for a particular *month*, confirming this fact in the notification.

Electing to notify changes in close links monthly

- 11.9.5 R (1) A firm elects to report changes in close links on a monthly basis by sending a written notice of election to the firm's usual supervisory contact at the FSA.
- (2) An election to report changes in close links on a monthly basis will stand until such time as the firm gives its usual supervisory contact at the FSA at least one month's written notice of its intention to cease reporting changes in close links on a monthly basis.

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

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16.4 Annual Controllers Report

Application

- 16.4.1 G ~~The effect of SUP 16.1.1R is that this~~ This section applies to every firm except those firms excluded from its operation by SUP 16.1.1R and SUP 16.1.3R. ÷

- (1) ~~a credit union;~~
- (1) ~~an ICVC;~~
- (2) ~~an incoming EEA firm;~~
- (3) ~~an incoming Treaty firm;~~
- (4) ~~a non-directive friendly society;~~
- (5) ~~[deleted];~~
- (6) ~~a sole trader;~~
- (7) ~~a service company;~~
- (8) ~~a UCITS qualifier.~~

...

16.5 Annual Close Links Reports

Application

- 16.5.1 G ~~The effect of SUP 16.1.1R is that this~~ This section applies to every firm except those firms excluded from its operation by SUP 16.1.1R

and SUP 16.1.3R. ÷

- ~~(1) a credit union;~~
- (1) an ICVC;
- ~~(2) an incoming EEA firm;~~
- ~~(3) an incoming Treaty firm;~~
- ~~(4) a non-directive friendly society;~~
- ~~(5) [deleted];~~
- ~~(6) a sole trader;~~
- ~~(7) a service company;~~
- ~~(8) a UCITS qualifier.~~

...

SUP Schedule 2 – Notification Requirements

Handbook Reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
SUP 11.3.7D	<i>Controllers - person proposing to acquire or increase control - notification from controller or proposed controller</i>	If the <i>controller</i> or proposed <i>controller</i> is an <i>authorised person</i> : <u>those sections of</u> Controllers Form A <u>which deal with details of the proposed change in control, joint notifications and supplementary information sections 1, 5 and 6</u> (see SUP 11 Ann 4D)	Proposing to take a step which would result in acquiring the specified <i>control</i>	Before acquiring <i>control</i> (the FSA has up to three months <u>months</u> to consider whether to approve <u>approve</u> <i>control</i>)

If the controller or proposed controller is an authorised person and a fund manager which satisfies SUP 11.3.5D: notification in accordance with SUP 11.3.5D

In other cases: ...

...

<p>SUP 11.3.15G</p>	<p><i>Controllers - proposing to reduce control - notification from controller</i></p>	<p>Extent of control (if any) which the controller will have following the change in control</p> <p><u>If the controller is a fund manager which satisfies SUP 11.3.5D: notification in accordance with SUP 11.3.5D</u></p>	<p>Reduction in control</p>	<p>Before reducing control (the FSA has up to three months to consider whether to approve change)</p>
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...

<p>SUP 11.9.1R</p>	<p><i>Close links</i></p>	<p>(a) the name of the person</p> <p>(b) the nature of the close links</p> <p>(c) if the close link is with a body corporate, its country of incorporation, address and</p>	<p>The firm becoming aware that it has become or ceased to be closely linked with any person .</p>	<p><u>Immediately</u> <u>As soon as reasonably practicable and no later than one month after the firm becomes aware that it has become or ceased to be closely linked or if the firm</u></p>
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registered
number; and

(d) if the *close link* is with an individual, his date and place of birth

has elected to report
monthly,
within 15
business days
of the end of
each month
(see
SUP 11.9.4R)