

CP12/24**

Financial Services Authority

Regulatory Reform:

PRA and FCA regimes relating to aspects
of authorisation and supervision

Contents

	Abbreviations used in this paper	3
1	Overview	7
2	Changes to General Provisions and Definitions (GEN 2)	12
3	Changes to regulatory disclosure and use of the regulators' logos (GEN 4/5)	15
4	Changes to the Supervision manual (SUP 5): Reports by Skilled Persons	18
5	Changes to the Supervision Manual (SUP 6): Applications to vary and cancel Part IV permissions and requirements	21
6	Changes to the Supervision Manual (SUP 8): Waiver and modification of rules	28
7	Changes to the Supervision Manual (SUP 11): Controllers and close links	32
8	Changes to Supervision Manual Chapters 13, 13A, 14 and Appendix 3: Passporting and related issues	36
9	Changes to the Supervision Manual (SUP 15): Notifications to the FSA	43
10	Changes to the Supervision Manual: SUP 16.2, 16.3, 16.4 (Annual controllers report), 16.5 (Annual close links reports), 16.6 (Compliance reports) and 16.10 (Verification of standing data)	46
11	Changes to the Supervision Manual (SUP 18): Transfers of business	49
12	Other changes to the PRA and FCA Handbooks	53

- Annex 1:** Cost benefit analysis
- Annex 2:** Compatibility Statement
- Annex 3:** List of questions
-
- Appendix 1:** Changes to General Provisions (GEN) in the Handbook
- Appendix 2:** Designation of changes to GEN
- Appendix 3:** Changes to Chapter 5 of the Supervision manual (SUP 5)
- Appendix 4:** Designation of changes to SUP 5
- Appendix 5:** Changes to Chapter 6 of the Supervision manual (SUP 6)
- Appendix 6:** Designation of changes to SUP 6
- Appendix 7:** Changes to Chapter 8 of the Supervision manual (SUP 8)
- Appendix 8:** Designation of changes to SUP 8
- Appendix 9:** Changes to Chapter 11 of the Supervision manual (SUP 11)
- Appendix 10:** Designation of changes to SUP 11
- Appendix 11:** Changes to Chapter 13, 13A and 14 of the Supervision manual (SUP 13, 13A and 14)
- Appendix 12:** Designation of changes to SUP 13, 13A and 14
- Appendix 13:** Changes to Chapter 15 of the Supervision manual (SUP 15)
- Appendix 14:** Designation of changes to SUP 15
- Appendix 15:** Changes to Chapter 16 of the Supervision manual (SUP 16)
- Appendix 16:** Designation of changes to SUP 16
- Appendix 17:** Changes to Chapter 18 of the Supervision manual (SUP 18)
- Appendix 18:** Designation of changes to SUP 18
- Appendix 19:** Changes to the Glossary of definitions
- Appendix 20:** Designation of changes to the Glossary of definitions
- Appendix 21:** Deletions to the Handbook

The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 12 December 2012.

Comments may be sent by electronic submission using the form on the FSA's website at: www.fsa.gov.uk/Pages/Library/Policy/CP/2012/cp12-24-response.shtml

You can also respond by email: cp12_24@fsa.gov.uk

If you wish to respond by letter, please send your comments to the person named at the end of each chapter and set out below:

Chapter 2:	Ashleigh Collins	Telephone: 020 7066 0678
Chapter 3:	Dirk Haubrich	Telephone: 020 7066 5698
Chapter 4:	Fiona Raistrick	Telephone: 020 7066 3890
Chapter 5:	Ferdinand Ley	Telephone: 020 7066 3726
Chapter 6:	Kaajal Shah	Telephone: 020 7066 0368
Chapter 7:	Ferdinand Ley	Telephone: 020 7066 3726
Chapter 8:	Mike Deveney	Telephone: 020 7066 4182
Chapter 9:	Kaajal Shah	Telephone: 020 7066 0368
Chapter 10:	Ferdinand Ley	Telephone: 020 7066 3726
Chapter 11:	William Hewitson/Stuart Hicks	Telephone: 020 7066 0152/0480
Chapter 12:	Ashleigh Collins	Telephone: 020 7066 0678
Annex 1:	Ashleigh Collins	Telephone: 020 7066 0678

If you are responding in writing to several chapters, please send your comments to Ashleigh Collins, who will pass your response on as appropriate.

All responses to the above people should be sent to them at:

Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

Abbreviations used in this paper

AIFMD	Alternative Investment Fund Managers Directive
CBA	Cost Benefit Analysis
COAF	Complaints Against the FSA Sourcebook
COND	Threshold Conditions Sourcebook
CP	Consultation Paper
CRD IV	Capital Requirements Directive IV
EEA firms	European Economic Area firms
EU	European Union
FCA	Financial Conduct Authority
FEES	Fees Manual
FPC	Financial Policy Committee
FSA	Financial Services Authority
FSMA	Financial Services and Markets Act 2000
GEN	General Provisions Sourcebook
IMD	Insurance Mediation Directive
LCO	Legal cutover
Lloyd's	Society of Lloyd's
MiFID	Markets in Financial Instruments Directive
MoU	Memorandum of Understanding

ONA	Online Notifications and Applications system
PRA	Prudential Regulation Authority
SUP	The Supervision Manual
The Bill	Financial Services Bill
UCITS	Undertakings for Collective Investment in Transferable Securities

1

Overview

The Financial Services Bill

- 1.1** The Financial Services Bill (the Bill) was introduced in the House of Commons on 26 January 2012 and provides a new framework for financial regulation in the UK. The Bill remains under consideration by Parliament, and is likely to become law over the coming months.
- 1.2** The Bill (and the necessary secondary legislation that will support it) provides for the creation of the new UK regulatory architecture. The Financial Policy Committee (FPC), within the Bank of England, will be responsible for protecting the stability of the financial system as a whole and for macro-prudential regulation. The new Prudential Regulation Authority (PRA), a subsidiary of the Bank of England, will prudentially supervise deposit takers, insurers and a small number of significant investment firms. The Financial Conduct Authority (FCA) will regulate conduct in retail and wholesale markets; supervising the trading infrastructure that supports those markets; and prudentially regulate firms not regulated by the PRA.¹ The Bill proposes changes to a number of existing Acts of Parliament, most notably the Financial Services and Market Act 2000 (FSMA), the Bank of England Act 1998 and the Banking Act 2009.
- 1.3** This paper consults on a set of changes to existing regulatory rules and guidance which are necessitated by the new regime. It has been prepared by the FSA in consultation with the Bank of England. Subsequent papers over the coming months will cover further changes to the Handbook, together with new policies resulting from regulatory reforms proposed in the Bill.

¹ Further detail on the proposed new UK regulatory framework has been set out in a number of papers published by the Government and by the FSA and Bank of England. Please see the FSA's webpages on Regulatory Reform at www.fsa.gov.uk/about/what/reg_reform

Creating two new Handbooks

- 1.4 The FSA is undertaking work to help the PRA and FCA create their new rulebooks, which will come into effect when the new regulators acquire their legal powers (a point we refer to as ‘legal cutover’). The overall approach to amending the rulebook ready for legal cutover is based on making only those changes that are required to implement properly the Bill and to support the creation of the new regulatory structure. This approach aims to control the degree of change for the regulators and for firms at legal cutover.
- 1.5 A key element of this approach is that when the PRA and FCA acquire their new powers, provisions in the existing FSA Handbook will be adopted, or ‘designated’, by the PRA, by the FCA or by both regulators, to form new PRA and FCA rulebooks. As a result, the majority of the provisions in the existing FSA Handbook will be carried forward to the new regulators in their respective rulebooks. Readers will be able to see which provisions have been adopted, or ‘designated’, by each regulator to form new PRA and FCA rulebooks. From legal cutover, the PRA and FCA will amend those provisions in line with their respective objectives and functions, consulting and co-ordinating with each other as appropriate. More information can be found in a ‘One Minute Guide’ to designation, which was published in June 2012.²
- 1.6 In addition to designation, however, some more substantive changes to the existing FSA Handbook are required to align the new rulebooks with the future objectives and functions of the PRA and FCA, as set out in the Bill, and the resulting adjustments to the regulatory procedures of the new regulators. It is this category of substantive changes that this paper consults on.
- 1.7 For clarity, when we refer to ‘amending the FSA Handbook’ in this paper, we mean substantively changing the current FSA text for the purposes of creating new PRA and FCA rulebooks.

Structure of this Consultation Paper

- 1.8 Each chapter covers a separate section of the Handbook:
- General Provisions and Common Definitions (GEN 2 and the Glossary)
 - Status Disclosure and use of the regulators’ logos: Changes to General Provisions (GEN) Chapters 4 and 5
 - Skilled Persons: Changes to Supervision Manual (SUP) Chapter 5
 - Applications to vary and cancel permissions and requirements (SUP 6)
 - Waiver and modification of rules (SUP 8)

² www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml

- Controllers and close links (SUP 11)
- Passporting under EU Directives (SUP 13/14)
- Notifications to the FSA (SUP 15)
- Reporting requirements (SUP 16)
- Insurance transfers of business (SUP 18)
- Other amendments to the PRA and FCA Handbooks (including deletions).

1.9 For legal cutover, we are proposing to make only changes that are necessitated by the new UK regime. Firms will be interested to see how key regulatory processes, such as authorisations, will be changing to reflect the creation of the PRA and FCA. However, in some areas our proposals do involve some policy decisions, and firms may wish to focus their comments on these proposals. These are:

- the updated wording of prescribed status disclosures under GEN 4;
- the use of the regulators' logos under GEN 5;
- the use of Skilled Persons (SUP 5);
- the channel for submitting waiver applications (SUP 8);
- certain updates to the guidance on transfers of insurance business to reflect other recent changes to legislation and current practices (SUP 18); and
- the chapter on other amendments.

1.10 The proposed amended PRA and FCA Handbook text in the Appendices to the main paper does not reproduce all the relevant Handbook chapters in full (unless it is helpful to do so), but only those provisions that are wholly new or substantively changed from what is currently in the existing FSA Handbook. In addition, for clarity, the intended designation of the provisions is included in the Appendices and is also indicated against each provision in the draft Handbook text. We are not formally consulting on the proposed designation of the individual provisions, but only on the content of the changes.

1.11 We have indicated in this CP the areas where we expect there to be transitional arrangements (to be confirmed by the legislation). We will make details of the expected transitional arrangements available over the coming months. Firms should also familiarise themselves with other regulatory reform publications and information.

Minor amendments

1.12 In addition to the 'designation' of the provisions in the existing FSA Handbook, various associated minor amendments will need to be made; including, (but not limited to):

- references to the ‘FSA’ being replaced (with references to the appropriate regulator as relevant);
- references to the FSA’s website, address, departments, teams or contact details being updated to provide the website, address or contact details of the PRA or FCA, as appropriate;
- cross-references to other parts of the PRA’s and FCA’s Handbook, to FSMA or to other legislation, being updated, where changes to numbering or headings have occurred; and
- restructuring of some specific provisions to make the text carried forward from the existing FSA Handbook work in the FCA’s and PRA’s new rulebooks (but where no change to the policy behind the provision has been made).

1.13 For provisions included in this CP, we have already applied as many of these minor changes as we can, to allow respondents to understand all the changes to each section. But where the only changes to a provision are minor ‘editorial’ amendments (as explained above) these provisions have not been included in the proposed Handbook text in this CP.

Timetable and next steps

- 1.14** Comments on this CP should reach us by 12 December 2012. Contacts are listed in each Chapter. We will review all responses, and final rule instruments and Policy Statements will be issued by the new regulators once the PRA and the FCA acquire their legal powers.³
- 1.15** Because the Bill is still going through the parliamentary process, final rules and guidance may be subject to changes to the Bill (or associated secondary legislation). If any changes have a significant policy effect on proposed FCA and PRA Handbook text on which we have already consulted, it is possible that we may need to re-consult.
- 1.16** Some references in the revised PRA and FCA Handbook text have not yet been finalised; for example online addresses, and names of some functions within the new regulators. These have been left in square brackets and will be completed before the final provisions are made. Such practical information will also be made available to firms in good time before the new regime is operational.
- 1.17** There will also be further PRA and FCA Handbook consultations driven by regulatory reform over the coming months.
- 1.18** We intend to publish a draft designation of the existing Handbook before legal cutover, to indicate the way in which the Handbook contents are being transitioned to the PRA and FCA.

³ Where other FSA consultations also cover changes to these Handbook provisions or sections, unrelated to Regulatory Reform, the various changes will be reconciled at the appropriate point.

Equality and diversity

- 1.19 We have considered the equality and diversity issues that may arise from the proposals in this CP. We have concluded that the proposals do not give rise to discrimination and are of low relevance to the equality agenda. Regarding a firm's disclosure of the identity of its regulator(s), we are conscious that consumers with reading difficulties, visual impairment, or difficulties reading English may be disadvantaged by receiving information in a written form. However, we do not feel that the proposals will negatively alter the current position regarding equality and diversity. We need to update the current disclosures for the benefit of consumers to more accurately reflect the new regulatory position.
- 1.20 We would welcome any comments respondents may have on any equality and diversity issues they believe arise from our proposals.

Who should read this Consultation Paper?

Firms

- 1.21 This paper should be read by all firms.

CONSUMERS

Consumers may be particularly interested to see the proposed changes to the requirements for firms to disclose to their customers who their regulator is, as firms will be using this new wording from next year. Other proposals in this CP are likely to be of general interest to consumers, since they concern various obligations on firms and amended regulatory processes that relate to these obligations.

2

Changes to General Provisions and Definitions (GEN 2)

Introduction

- 2.1 In this chapter we explain our proposed amendments to Chapter 2 of the General Provisions section in the FSA Handbook (GEN 2) and to certain common Handbook definitions. These changes aim to help users understand how provisions that appear in both Handbooks will apply and should be interpreted.
- 2.2 The proposed changes to the existing Handbook text can be found at Appendix 1.

Summary of key Handbook changes for all firms

GEN 2

- 2.3 GEN 2 contains a number of new proposed provisions designed to ensure that the new regulators' Handbooks continue to work effectively. In summary, the new provisions aim to ensure (i) that cross references continue to work, where a reference may need to be made to the other regulator's Handbook (see GEN 2.2.13AR); and (ii) that provisions carried over by the new regulators are within their respective regulatory scope (see GEN 2.2.23R-2.2.25G).
- 2.4 On the second of these points, at legal cutover, some provisions will be adopted by both the PRA and the FCA. These provisions will appear identically in each regulator's Handbook. However, some elements of these identical provisions will only be relevant to the PRA's regulatory scope, and therefore be applied only by the PRA. Some other elements may only be

relevant to the FCA's regulatory scope, and be applied by the FCA only. So while such provisions will largely be retained in their entirety in each new regulator's Handbook, the new material will be added to GEN 2 to explain that these joint provisions must be interpreted by a firm as applying only to the extent that they are within each regulator's powers.

- 2.5 The proposed new text illustrates through the examples given that such identical rules or guidance fall into two categories: (i) those that both the PRA and the FCA will apply to a particular person, but in line with their regulatory responsibilities (e.g. SYSC 6.1.1R), and (ii) those where a regulator does not have the power to make the provision in respect of a particular type of person at all (e.g. BIPRU 4 or COMP 5.2.1R) and which must be read as not applying.
- 2.6 Firms will need to consider the effect of these provisions when reviewing the PRA and FCA Handbooks. Where particularly appropriate, we will insert provisions into modules to remind firms to consider GEN 2.

Definitions

- 2.7 We are proposing some changes and additions to the Handbook Glossary. The current working text of these is at Appendix 19.
- 2.8 For example, when it is designated by the PRA and the FCA, the text of the FSA Handbook will be amended with suitable replacement terms for references to 'the FSA'. A commonly used replacement term will be 'appropriate regulator.' We will define 'appropriate regulator' in the Handbook glossary, with three possible meanings (see Appendix 19 for the definition), and it will also, where helpful, be explained at the beginning of relevant modules where it has a particular meaning (usually derived from the Bill). In summary, 'appropriate regulator' can mean:
- In the FCA's Handbook, the FCA, and in the PRA's Handbook, the PRA. This will be the most common use of the definition.
 - In accordance with section 178 of amended FSMA (re changes of control and close links): for PRA-authorised persons, the PRA, and any other authorised persons, the FCA.
 - In accordance with section 103A of amended FSMA (Control of Business transfers): the PRA for schemes in relation to PRA-authorised persons, and the FCA in all other cases.
- 2.9 Firms will need to pay particular attention to the definition of 'appropriate regulator' in the relevant sections of the Handbook.
- 2.10 In addition, the acronym PRA is currently used in the FSA Handbook to refer to the 'position risk adjustment' for risk capital purposes. In future, PRA will not be used for this. Instead, the term 'position risk adjustment' will be spelt out in full.

- Q1:** Do you have any comments on the proposed new text for GEN 2 to explain the interpretation of joint Handbook provisions?
- Q2:** Do you have any comments on the proposed new Handbook definitions included in Appendix 19?

Contact

Comments should reach us by 12 December 2012. Please send them to:

Ashleigh Collins
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 0678
Email: cp12_24@fsa.gov.uk

3

Changes to regulatory disclosure and use of the regulators' logos (GEN 4/5)

Introduction

- 3.1 In this chapter we set out proposals to amend the requirements for disclosure of regulatory status and the provisions on firms' ability to use the regulators' logos.
- 3.2 The proposed changes to the existing Handbook text can be found at Appendix 1.

Summary of key Handbook changes for all firms

GEN 4

- 3.3 Firms will continue to be required to disclose their regulatory status (i.e. who authorises and regulates them) in letters (or electronic equivalent) to retail clients. The current prescribed wording also satisfies several European Directive requirements⁴ regarding such status disclosure, but currently refers to the 'Financial Services Authority'. Since the FSA will be replaced by the FCA and the PRA, we propose to amend the prescribed wording to refer to the FCA and the PRA as appropriate, according to type of firm.
- 3.4 One further change is that we propose amending the disclosure requirements for UK branches of non-EEA/overseas firms, for PRA authorised persons. At present, the disclosure wording for these branches is the same as for UK-regulated firms. When the PRA is established, these branches will be subject to limited regulation by the PRA. We therefore

⁴ E.g. the Distance Marketing Directive; the Insurance Mediation Directive; the Markets in Financial Instruments Directive.

propose to mirror the requirements already in existence for incoming branches of EEA firms, by requiring branches of non-EEA firms to disclose the identity of the regulator of the firm in the jurisdiction of that overseas firm's registered or head office; that they are subject to limited regulation by the PRA; and that details about the extent of PRA regulation are available from the branch on request.

- 3.5 Our proposed revised wording for each set of circumstances can be found in the draft Handbook text.

Q3: Do you have any comments on any of the proposed updated status disclosure wording?

GEN 5

- 3.6 We currently provide a general licence for relevant firms to use the FSA's logo. Firms are permitted to use the logo to assist with their statutory status disclosure obligations under GEN 4, but whether they choose to do so is at their discretion.
- 3.7 We propose to remove the general licence for firms to use the FSA's logo six months after legal cutover. Furthermore, we do not intend to introduce a new general licence to permit firms to use either the FCA or the PRA logos, so firms will have no discretion to use either logo. Using the FSA logo was initially permitted as an interim measure when the FSA was first established, on the basis that it might help firms carry out their statutory status disclosure obligations. However, we do not believe that voluntary use of the regulators' logos by firms will lead to significant benefits over and above the required status disclosure under GEN 4.

Q4: Do you have any comments on our proposal to remove the option for firms to use either the logo of the FCA or PRA?

Keyfacts logo

- 3.8 GEN 5 also contains a general licence for firms to use the 'keyfacts' logo on certain documents for consumers. To avoid doubt, we do not intend changing this general licence (except for the FCA to take over ownership of the logo and its licence). We believe that the 'keyfacts' logo will continue to be a useful tool for consumers, helping them to identify which are the priority documents they should read first when arranging a mortgage, buying insurance, and receiving financial advice.

Transitional period

- 3.9** We are conscious that the main costs of our proposals will be on firms' production of their business stationery. With this in mind, we have already highlighted to small firms in our June 2012 regulatory update that changes will be forthcoming.⁵
- 3.10** We will aim to give firms as much certainty as we can about the changes as soon as possible. To give firms time to plan for change, we also propose that the changes to GEN 4 and the revocation of the FSA logo license should include a transitional period of six months after legal cutover. We believe six months will give firms time to make the necessary changes to their relevant business stationery and to any electronic equivalents to letters. It will also limit the period in which consumers are potentially at risk of confusion arising from status disclosures that reference the FSA as well as the FCA and PRA.

Q5: Do you agree with our proposal for a six month transitional period from legal cutover?

Cost benefit analysis

- 3.11** Please see Annex 1.

Contact

Comments should reach us by 12 December 2012. Please send them to:

Dirk Haubrich
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
Telephone: 020 7066 5698
Email: cp12_24@fsa.gov.uk

⁵ www.fsa.gov.uk/smallfirms/resources/regulation_roundup/index.shtml

4

Changes to the Supervision Manual (SUP 5): Reports by Skilled Persons

Introduction

- 4.1 In this chapter, we explain our proposed amendments to SUP 5 and the Fees Manual (FEES) in relation to the use of Reports by ‘Skilled Persons’, arising from the proposed changes to the PRA and FCA’s s.166 power.
- 4.2 In summary, we propose:
- amendments to reflect the extension of the s.166 power for the FCA to cover recognised investment exchanges (s.166(11));
 - amendments to reflect the power of the regulators to contract directly with the Skilled Person and rules to provide for the costs of a Skilled Person to be payable as a fee by the firm concerned (s.166(9)); and
 - amendments to reflect the power of the regulators to commission a Skilled Person to collate or keep up to date information, where a regulated firm has breached regulatory requirements to do so (s.166A).
- 4.3 The text of the proposed amended SUP 5 can be found at Appendix 3.

Summary of key Handbook changes for all firms

Amendment to SUP 5.1 (application and purpose)

- 4.4 The FCA will for the first time be permitted to use its power to require a report by a Skilled Person in respect of recognised investment exchanges. We believe that this will be a valuable supervisory tool available to assess whether these exchanges are meeting their recognition requirements.
- 4.5 The following parties will be brought into the scope of the FCA's Skilled Person power:
- a) recognised investment exchanges;
 - b) all other members of a recognised investment exchange's group;
 - c) a partnership of which a recognised investment exchange is a member; or
 - d) a person who has at any time been a person falling within (a), (b) or (c) above.
- 4.6 Other minor amendments are also proposed to guidance and rules within SUP 5 to make all of SUP 5 applicable to recognised investment exchanges and associated entities.

Amendments to SUP 5.4 (appointing and reporting process)

- 4.7 Appointing a Skilled Person to provide a report on a specific matter currently involves us sending a notice to the firm concerned and either nominating a Skilled Person or asking the firm to nominate a Skilled Person (or more than one) to conduct the work. The firm then contracts directly with the Skilled Person to produce the required report.
- 4.8 The Bill (s.166(3)(b)) permits the regulator to appoint the Skilled Person to conduct the work and to contract directly with them. We propose to amend SUP 5.4 to refer to this provision.
- 4.9 We will also issue a new FEES 3 rule to enable the regulator to levy a fee on the individual firm concerned to recover the costs of the Skilled Person where the Skilled Person is appointed directly by the regulator. The firm will be provided with an indication of the costs expected to be incurred by the appointment of the Skilled Person, before the work begins.
- 4.10 Other minor amendments to SUP 5 and the glossary are also proposed to reflect this Bill amendment.

Amendments to implement section 166A

- 4.11 The Bill will insert a new section in FSMA which will enable the regulator, where it considers that an authorised person has contravened a requirement in the rules to collect or keep up-to-date information required by those rules, to require a Skilled Person to collect or update the information and report this to the regulator. This forms s.166A of the Bill.

We propose to amend SUP 5 to reflect the provisions of s.166A. That will result in a number of minor changes throughout SUP 5.

Annex 1 and 2 of SUP 5

- 4.12** We propose that for the PRA, both the existing Annex 1 (Examples of when the FSA may use the Skilled Person tool) and Annex 2 (An overview of the appointment and report development process) are not carried forward in SUP 5 in the PRA Handbook. The information maintained within these annexes will, where appropriate, be included in wider PRA documentation and guidance. This will allow this information on the use of reports by Skilled Persons and appointment and reporting process to be updated more regularly as the PRA's supervisory approach develops.
- 4.13** For the FCA, we propose to retain Annex 1 of SUP 5 in the FCA Handbook (including current examples of how the Skilled Person tool may be used, with some indicative additions to reflect the changes to the s.166 power), but not to carry forward Annex 2 (which will be outdated).

Q6: Do you have any comments on our proposals to amend SUP 5?

Cost benefit analysis

- 4.14** Please see Annex 1.

Contact

Comments should reach us by 12 December 2012. Please send them to:

Fiona Raistrick
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 3890
Email: cp12_24@fsa.gov.uk

5

Changes to the Supervision Manual (SUP 6): Applications to vary and cancel Part IV permissions and requirements

Introduction

- 5.1 In this chapter, we explain our proposed amendments to the way in which a firm applies to vary or cancel its Part IV permission, or to vary or cancel ‘requirements’ imposed on it.
- 5.2 The text of the proposed amendments is set out at Appendix 5.

Overview of Bill changes

Replacement of Part IV with Part 4A

- 5.3 Part 4A is the new part of FSMA detailing requirements for permissions to carry on regulated activities. Part 4A replicates the current Part IV section of FSMA but with modifications to reflect the new regulatory structure – notably the creation of the FCA and the PRA. Accordingly, ‘Part 4A permission’ will be the new term for a Part IV permission.

Submission of applications to vary and cancel permission from legal cutover

- 5.4 From legal cutover, a dual-regulated firm (i.e. a firm authorised by the PRA but regulated for conduct purposes by the FCA) must apply to the PRA to vary or cancel its Part 4A permission (amended FSMA s.55I(1)).
- 5.5 An FCA-only regulated firm (i.e. a firm authorised by the FCA and regulated by the FCA for prudential and conduct purposes) must apply to the FCA to vary or cancel its Part 4A permission (amended FSMA s.55H) except where it seeks to vary its permission to include a PRA-regulated activity, in which case it must apply to the PRA (amended FSMA s.55I(3)).

Separation of requirements from a firm's permission

- 5.6 Currently, we can, under FSMA s.44, vary a firm's permission in response to its application, or vary or cancel a requirement we imposed on it.
- 5.7 The Bill amends FSMA to narrow the concept of 'variation of permission' by establishing largely separate procedures for dealing with 'requirements'. This is set out in amended FSMA s.55L and s.55M.
- 5.8 Applications relating to a variation of permission will continue to cover: (a) adding a new regulated activity to those for which permission is held; (b) removing a regulated activity from the permission; or (c) varying the description of a regulated activity for which permission is held. (This is set out in amended FSMA s.55H and s.55I.)
- 5.9 In addition to this, if a firm has applied to vary its permission, the FCA and the PRA will be able to impose new requirements on the firm, if prescribed conditions are met, as set out in amended FSMA s.55L(1) and s.55M(1). The FCA will be able to impose a new requirement whether the variation of permission application is made to the FCA or the PRA; whereas the PRA will only be able to impose new requirements on a firm that has made a variation of permission application to the PRA.

Imposition, variation and cancellation of requirements by the FCA and the PRA

- 5.10 A new approach to requirements is reflected in provisions dealing with the regulators' power to impose, vary or cancel requirements on their own initiative (under amended FSMA s.55L(2)-(4) and amended FSMA s.55M(2)-(4)), and on the application of a firm (covered in amended FSMA s.55L(5) and amended FSMA s.55M(5)).
- 5.11 The FCA has the power to impose a new requirement on a firm, or to vary or cancel a requirement it has previously imposed on a firm. The PRA has the power to impose a new requirement on a dual-regulated firm, or to vary or cancel a requirement it has previously imposed on such a firm.

The obligations on the FCA and the PRA to consult each other/seek each other's consent (arising other than pursuant to the exercise of the regulator's own initiative powers)

- 5.12** The PRA may determine an application to vary a permission only with the consent of the FCA (under amended FSMA s.55I(1) and (3)). The PRA is required to consult the FCA when determining an application to cancel a permission (amended FSMA s.55I(2)).
- 5.13** Where an application for the variation or cancellation of permission is made to the FCA by an applicant that is a member of a group that includes a dual-regulated firm, the FCA must consult the PRA as part of its consideration of the application (amended FSMA s.55H(5)).
- 5.14** Before imposing a new requirement or varying an existing requirement the PRA must consult the FCA (amended FSMA s.55M(6)). Before the FCA imposes a new requirement or varies an existing requirement, relating to a firm that is or will be (on the granting of its application for permission) dual-regulated, or a firm that is a member of a group that includes a dual-regulated firm, the FCA is required to consult the PRA (amended FSMA s.55L(6)).

The relevance of threshold conditions

- 5.15** From legal cutover, the FCA and the PRA will each be responsible for their own set of threshold conditions. In granting a firm's application for the variation of its permission, imposing or varying requirements on a firm, or consenting to a variation, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, the threshold conditions for which that regulator is responsible (amended FSMA s.55B(3)).
- 5.16** As is the case currently for the FSA, this duty does not prevent either the FCA or the PRA from taking such steps as it considers necessary in order to advance its objectives (amended FSMA s.55B(4)).

Transitional Arrangements

- 5.17** We expect that transitional arrangements will cover the treatment of existing Part IV permissions and the treatment of those applications that are 'in train' at legal cutover. Details of these arrangements will be given ahead of legal cutover.

Summary of key Handbook changes for all firms

- 5.18** This section sets out the proposed amendments to SUP 6 to reflect the Bill changes that affect processes for both dual-regulated firms and FCA-only regulated firms.

The ‘relevant regulator’

- 5.19 A firm will need to understand to which regulator it can make an application:
- to vary its permission;
 - to cancel its permission; or
 - to have imposed on it a new requirement, or to vary or cancel any existing requirements.
- 5.20 New provisions are proposed for SUP 6 (6.2.3A G – 6.2.3E G) to reflect which regulator the ‘relevant regulator’ would be for each type of application (and the term itself is defined in a new provision SUP 6.1.3AG).

Separation of requirements from a firm’s permission

- 5.21 As explained above, the Bill will introduce a narrowed scope of the concept of ‘variation of permission’. In particular, varying or cancelling a requirement imposed on it will no longer form part of the ‘variation of permission’ procedure. Therefore, provisions throughout SUP 6 referring to ‘variation of permission’ have been amended to make an express reference to ‘requirements’ where we think this is relevant. Examples of where such an amendment has been made include SUP 6.1.1 G, 6.2.5 G, 6.2.6 G, 6.2.9 G and 6.2.10 G.
- 5.22 The FSA’s Supervision Manual currently separates out:
- provisions detailing the procedures by which a firm can apply to the FSA to vary or cancel its permission, as well as the FSA’s powers upon receiving such an application – SUP 6; and
 - provisions relating to the FSA’s powers to vary a firm’s permission on its own initiative so as to impose limitations or requirements on the firm – SUP 7.
- 5.23 We are seeking to preserve this distinction for the FCA and the PRA going forward, so the proposed revised SUP 6 does not cover, in detail, the own-initiative variation of permission power or the own-initiative requirement power of the FCA or the PRA. The FCA’s approach to exercising these powers will be covered in an updated FCA version of SUP 7, to be consulted on in autumn 2012. The PRA approach will be set out in other material, if appropriate, to be published ahead of legal cutover.
- 5.24 We envisage that firms will use the existing (but re-branded) application form for variations of permission in order to apply for the addition, variation or cancellation of a requirement.

Time to determine application under SUP 6

- 5.25 Under amended FSMA s.55V(1)-(2), the regulator determining an application has six months to consider a completed application (and 12 months to consider an incomplete one). A new provision SUP 6.3.36A G has been inserted to recognise that these timeframes also apply where the PRA has to seek the consent of the FCA before determining an

application. This is relevant in cases where a dual-regulated firm makes an application to the PRA to vary its permission, as well as where an FCA-only regulated firm makes an application to the PRA to add a PRA-regulated activity to its permission.

Regulator(s) acquiring additional information from a firm in response to application under SUP 6

- 5.26 As is currently the case, in response to any application under SUP 6, the regulator to whom the application is made can request any additional information from the firm that it reasonably considers necessary to enable it to determine the application. In cases where an application cannot be determined by the PRA without the consent of the FCA (i.e. where a dual-regulated firm makes a variation of permission application to the PRA, or where an FCA-only regulated firm makes an application to the PRA to add a PRA-regulated activity) the FCA may also request any additional information from the firm it reasonably considers necessary to decide whether to give consent. To reflect this, new SUP 6.1.3A G has been inserted and SUP 6.3.23 G – 6.3.27 G have been amended.

Imposition of requirements where a firm applies for a variation of its permission

- 5.27 As explained above, both the PRA and the FCA will be able to impose new requirements on a dual-regulated firm in response to an application by the firm to vary its permission, as well as on an FCA-only regulated firm who has made an application to the PRA to vary its permission by adding a PRA-regulated activity. New SUP 6.3.32C G and 6.3.33C G have been inserted to reflect this.

The relevance of threshold conditions

- 5.28 Also as noted above, the FCA and the PRA are each required when varying a firm's permission, imposing or varying a requirement on a firm, or consenting to a variation, to ensure that the firm will satisfy and continue to satisfy the threshold conditions for which the regulator is responsible. To reflect this, SUP 6.3.28 G and 6.3.29 G have been amended and new SUP 6.3.28A-C G inserted.

Summary of key Handbook changes for dual-regulated firms

- 5.29 This section sets out the amendments to SUP 6 that are only relevant to dual-regulated firms.

The regulator to whom an application to vary or cancel permission is made

- 5.30 Under amended FSMA s.55I(1)-(2) dual-regulated firms will need to apply to the PRA to vary or cancel their permission. New provisions SUP 6.2.3D G, 6.3.1C G and 6.4.1B G have been inserted to reflect this.

Imposition, variation and cancellation of requirements on a firm's application

- 5.31 As noted above, a dual-regulated firm can apply to either the FCA or the PRA to have a new requirement imposed on it, or to vary or cancel an existing requirement imposed on it by that regulator. SUP 6.2.3C G, 6.2.3E G, 6.3.2A G and 6.3.2B G have been inserted to reflect this.

Regulator with whom to discuss plans to make an application under SUP 6

- 5.32 Depending on whether a dual-regulated firm is planning to apply for (i) a variation or cancellation of permission or (ii) for the imposition, variation or cancellation of a requirement, the firm should discuss its plans before making its application to the regulator(s). SUP 6 has been updated to indicate how this should be done in particular circumstances.
- 5.33 For all applications covered by SUP 6, firms should discuss their plans with the regulator to whom the application will be made. SUP 6.2.6 G, 6.3.17(2) G and 6.3.21G have been amended to reflect this.
- 5.34 If a dual-regulated firm wants to cease carrying on one or more regulated activities it should notify both the PRA and the FCA. SUP 6.2.7 G has been amended to reflect this.
- 5.35 Where a dual-regulated firm has to discharge obligations to its customers or policyholders before ceasing to carry on a regulated activity, it should discuss its plans with both the PRA and FCA. SUP 6.2.8 G has been amended to reflect this.
- 5.36 A dual-regulated firm which is winding down its activities should discuss its circumstances with both the PRA and the FCA. SUP 6.2.10 G has been amended to reflect this.

Summary of key Handbook changes for FCA-only regulated firms

The regulator to whom an application to vary or cancel permission is made

- 5.37 New SUP 6.2.3B G and 6.3.1B G have been inserted to reflect the fact that FCA-only regulated firms must apply to the PRA to seek a variation of permission that includes a PRA-regulated activity.

Q7: Do you have any comments on our proposed approach to amending SUP 6?

Cost benefit analysis

5.38 Please see Annex 1.

Contact

Comments should reach us by 12 December 2012. Please send them to:

Ferdinand Ley
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 3726
Email: cp12_24@fsa.gov.uk

6

Changes to the Supervision Manual (SUP 8): Waiver and modification of rules

Introduction

- 6.1 In this chapter we explain our proposed amendments to Chapter 8 of the Supervision Manual (SUP 8), which sets out how firms can apply for waivers and modifications of rules.
- 6.2 The text of the proposed amendments is set out at Appendix 7.

Overview of Bill changes

- 6.3 The Bill (s.138A and s.138B) will necessitate a new approach to the waiving or modification of rules; notably that:
- the PRA can waive or modify rules contained in the PRA Handbook as it applies them to dual-regulated firms; and
 - the FCA can waive or modify rules contained in the FCA Handbook as it applies them to dual-regulated and FCA-only regulated firms.⁶
- 6.4 The Bill requires the FCA to consult the PRA before deciding whether or not to publish a waiver which relates to:
- a PRA authorised person; or

⁶ The PRA and FCA cannot waive or modify rules made under s.137M (the threshold code).

- an authorised person who has a PRA-authorized person as a member of its immediate group.⁷

Summary of key Handbook changes for all firms

- 6.5 This section sets out the proposed amendments to SUP 8, to reflect Bill changes, that affect both FCA-only regulated and dual-regulated firms.

Use of the terms ‘appropriate supervisory contact’ and ‘appropriate regulator’

- 6.6 There are a number of references in SUP 8 to the term ‘appropriate supervisory contact’ and ‘appropriate regulator’. By ‘the appropriate supervisory contact’ we mean the usual supervisory contact a firm will normally deal with in relation to supervisory matters within its ‘appropriate regulator’. A firm’s ‘appropriate regulator’ for these purposes is the regulator responsible for the rule that the firm wishes to waive or modify, i.e. for rules in the PRA Handbook, the PRA; and for rules in the FCA Handbook, the FCA.

Form and method of application for waiver/modification of rules

- 6.7 The preferred method for submitting applications for a modification or waiver of rules is via email (see SUP 8.3.3AG). From legal cutover, applications for waivers must no longer be made via the Online Notification and Application (ONA) system (see SUP 8.3.3D).

Advancement of regulatory objectives

- 6.8 Under the Bill, neither regulator may give a direction waiving or modifying a rule unless it is satisfied that the direction would not adversely affect the advancement of, in the case of the PRA, its objectives, and in the case of the FCA, its operational objectives. SUP 8.3.1(2) G has been amended accordingly. The FCA and the PRA will no longer consider whether the direction would result in undue risk to persons whose interests the rules are intended to protect when considering a waiver request. However, as part of their consideration, both regulators will continue to satisfy themselves whether compliance with the rules or the unmodified rules would be unduly burdensome.

Publication of direction

- 6.9 An additional criterion will be taken into account by both regulators when considering whether it is appropriate or necessary to publish a waiver. In addition to the existing requirements, both regulators will in future be required also to consider whether the

⁷ ‘immediate group’ is defined in s.421ZA of FSMA. The FCA will not have to consult the PRA when publishing a waiver of rules made under s247/248.

publication of the waiver would be detrimental to the UK financial system (see SUP 8.6.2G).

Transitional arrangements for existing waivers and modifications

- 6.10** We expect that transitional arrangements will cover the treatment of existing waivers and modifications that have been granted by the FSA to firms before legal cutover. Details of these arrangements will be given ahead of legal cutover.

Summary of key Handbook changes for dual-regulated firms

- 6.11** This section sets out the amendments to SUP 8 that are only relevant to dual-regulated firms.
- 6.12** A new provision SUP 8.3.4B G is proposed for the PRA Handbook to reflect the expectation that dual-regulated firms will send applications for waivers and modifications to:
- the FCA for rules in the FCA Handbook applicable to that dual-regulated firm; and
 - the PRA for rules in the PRA Handbook.

Summary of key Handbook changes for FCA-only regulated firms

- 6.13** This section sets out the amendments to SUP 8 that are only relevant to FCA-only regulated firms. They are as follows:

Submission of waiver/modification applications

- 6.14** FCA-only regulated firms will send their application for waivers and modifications of rules to the FCA (see SUP 8.3.4A G).

Q8: Do you have any comments on our proposed approach to amending SUP 8?

Q9: Are there any additional aspects of the changes introduced by the Bill that you feel should be covered by SUP 8?

Cost benefit analysis

6.15 Please see Annex 1.

Contact

Comments should reach us by 12 December 2012. Please send them to:

Kaajal Shah
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 0368
Email: cp12_24@fsa.gov.uk

7

Changes to the Supervision Manual (SUP 11): Controllers and close links

Introduction

- 7.1 In this chapter we explain our proposed amendments to Chapter 11 of the Supervision Manual (SUP 11), which sets out rules and guidance about a firm's controllers and close links.
- 7.2 The text of the proposed amendments is set out at Appendix 9.

Overview of Bill changes

- 7.3 The Bill amends sections 178 and 185 of FSMA to reflect the new regulatory structure, the requirements to notify either the PRA or FCA (as relevant), and the assessment procedure when a person decides to acquire or increase control over a UK-authorized person.
- 7.4 The Bill requires that a person who decides to acquire, increase control over, reduce, or cease to have control over, a dual-regulated firm must notify the PRA. The PRA must then consult the FCA in assessing proposed acquisitions and increases of control.
- 7.5 Where the acquisition of, increase in, reduction in, or cessation of control is in respect of a FCA-only firm, notifications must be made to the FCA. The FCA will then consult the PRA in assessing a proposed acquisition or increase in control where:
- the 'target' firm is an FCA-only firm which is part of an immediate group⁸ that contains a dual-regulated firm; or
 - the proposed controller is a dual-regulated firm.

⁸ 'immediate group' is defined in s.421ZA of FSMA

Transitional arrangements

- 7.6 We expect that transitional arrangements will cover the treatment of existing controllers. Details of these arrangements will be given ahead of legal cutover.

Summary of key Handbook changes for all firms

- 7.7 This section sets out the proposed amendments to SUP 11, to reflect Bill changes, that affect both FCA-only regulated and dual-regulated firms.

Change of Threshold Conditions

- 7.8 Threshold Conditions will change at legal cutover, which in turn affects the wording of provisions that reference them. SUP 11.2.3G and SUP 11.2.5G have been amended to reflect that the current standalone close links threshold condition has, in the draft Threshold Conditions Order⁹, been integrated into a wider threshold condition on effective supervision.

Use of the term ‘appropriate regulator’

- 7.9 There are a number of references in SUP 11 that refer to the term ‘appropriate regulator’. The term is defined in line with s.178 of the Bill. Where the target firm is dual-regulated, the ‘appropriate regulator’ will be the PRA, and where the target firm is only regulated by the FCA, the ‘appropriate regulator’ will be the FCA.

Form and method of application for controllers and close links notifications

- 7.10 Controller notifications should be sent to the ‘appropriate regulator’ via the form of notification specified in SUP 11.3.7D. Close-link notifications should be sent via the form of notification specified in SUP 11.9.3A to both the PRA and FCA for dual-regulated firms and to the FCA for FCA-only regulated firms. Further information will be provided ahead of legal cutover to assist firms to identify where notifications should be sent. As explained in Chapter 1 of this CP, relevant online addresses for electronic submissions will be updated and communicated ahead of legal cutover.

Single, joint section notification

- 7.11 To avoid duplication, a single, joint notification to the appropriate regulator may be submitted in the following circumstances:
- A firm and its controller or proposed controller can submit a single section 178 notice containing all the information required from the firm and the controller or proposed controller (see SUP 11.5.8G).

⁹ www.hm-treasury.gov.uk/d/draft_fsma_act_threshold_conditions_order_2013.pdf

- Where a firm is proposing a change in control over more than one firm within a group, the controller or proposed controller can submit a single section 178 notice to the PRA in relation to all dual-regulated firms within the group, and to the FCA in relation to all FCA-only regulated firms within the group (see amended SUP 11.5.9G).
- When an event such as a merger or a group restructuring occurs, as a result of which a single firm undergoes more than one change in control, or where more than one firm in a group undergo a change in control, all firms and their controllers or proposed controllers can submit a single section 178 notice to the PRA in relation to of all dual-regulated firms, and to the FCA in relation of all FCA-only regulated firms (see amended SUP 11.5.10G).

Regulator objections

- 7.12** Section 191A of amended FSMA deals with the procedure the appropriate regulator must follow where there has been (i) a failure to notify or (ii) a condition imposed has been breached or (iii) there are grounds for objecting to control on the basis of matters in section 186 of FSMA (which sets out the assessment criteria permitting an objection to an acquisition). The wording of SUP 11.7.2G has been amended to clarify the circumstances when the ‘appropriate regulator’ may follow the procedure set out in section 191A of FSMA.
- 7.13** Before making a determination under section 185 of FSMA or giving a warning notice under section 191, the appropriate regulator must, in addition to complying with EU obligations to consult relevant competent authorities, comply with the consultation requirements with the other regulator as set out in sections 187A, 187B and 191A of FSMA (see amended SUP 11.7.13G).

Summary of key Handbook changes for dual-regulated firms

- 7.14** This section sets out the amendments to SUP 11 that are only relevant to dual-regulated firms.

Lloyd’s notifications

- 7.15** If a firm is required to obtain approval from the Society of Lloyd’s for any changes in its controllers, then it should apply for this approval from Lloyd’s as well as notifying the PRA (see amendment to SUP 11.4.6 G).

Summary of key Handbook changes to FCA-only regulated firms

- 7.16** We propose no substantive changes relevant for firms regulated only by the FCA in relation to SUP 11.

Q10: Do you have any comments on our proposed approach to amending SUP 11?

Q11: Are there any additional aspects of the changes introduced by the Bill that you feel should be covered by SUP 11?

Cost benefit analysis

7.17 Please see Annex 1.

Contact

Comments should reach us by 12 December 2012. Please send them to:

Ferdinand Ley
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 3726
Email: cp12_24@fsa.gov.uk

8

Changes to Supervision Manual Chapters 13, 13A, 14 and Appendix 3: Passporting and related issues

Introduction

- 8.1 In this chapter we propose changes to the content of SUP 13 (Exercise of passport rights by UK firms), SUP 13A (Qualifying for authorisation under the Act) and SUP 14 (Incoming EEA firms changing details, and cancelling qualification for authorisation). The changes are driven by Schedule 4 to the Bill and consequential changes that will be required to the EEA Passport Rights Regulations. In addition, SUP Appendix 3 sets out additional Guidance on general passporting issues.
- 8.2 The text of the proposed amendments is set out at Appendix 11.

Scope

- 8.3 The 'Single Market Directives' currently covered by SUP 13, SUP 13A, SUP 14 and SUP Appendix 3 are:
- the Banking Consolidation Directive;
 - the First, Second and Third Non-life Insurance Directives;
 - the Consolidated Life Directive;

- the Reinsurance Directive;
- the Markets in Financial Instruments Directive (MiFID);
- the Insurance Mediation Directive (IMD); and
- the UCITS Directive.

8.4 The Banking Consolidation Directive (including its passporting provisions) will be replaced by the entry into force and implementation of the CRD IV legislation in the future. Although timing is currently unclear, this will require consequential changes throughout SUP 13, 13A and 14. The scope of the modules will also be extended to reflect the implementation of the Alternative Investment Fund Managers Directive (AIFMD) with effect from July 2013, and by our implementation of Solvency II in 2013, which will consolidate the Insurance Directives.¹⁰ The modules will also be affected by the implementation of other EU Directives over the coming months. These changes will all be consulted on separately from this CP.

Overview of Bill changes

- 8.5** The overall legal framework and processes for passporting are set out in EU legislation and are therefore not changed by UK Regulatory Reform. However, under the Bill, UK regulatory responsibilities for the operation and oversight of passporting under the Single Market Directives covered by SUP 13, 13A and 14 will be shared between the FCA and the PRA. This will cover both UK-authorised firms passporting out of the UK into another EEA State, and EEA firms passporting into the UK.
- 8.6** Roles and responsibilities are allocated to the ‘appropriate UK regulator’. The meaning of this term in each case will be stipulated by the Treasury for the purposes of notifying the European Commission of the relevant competent authority/competent authorities and their functions under each Single Market Directive.¹¹ For consistency, we are proposing to use the same term, ‘the appropriate UK regulator’ in SUP 13, 13A and 14, except where roles and responsibilities can readily be assigned only to the FCA or to the PRA. New proposed text in each Chapter explains this point. Some further clarity may be possible in the final Handbook text, once the Bill and supporting secondary legislation are agreed.
- 8.7** In relation to outward passporting, the ‘appropriate UK regulator’ is defined in the Bill as: the PRA, where the UK firm is a PRA-authorised person, and the FCA in any other case.
- 8.8** Our current understanding is that at legal cutover FCA and PRA passporting responsibilities will be allocated as follows¹²:

¹⁰ The FSA has already consulted on proposed changes to SUP 13, SUP 13A and SUP 14 in order to implement Solvency II (in CP 12/13, ‘Transposition of Solvency II, Part 2’, published in July 2012). The changes to the Handbook text required by EU legislation and by the Bill will be integrated as necessary over the coming months.

¹¹ See paragraph 191 of the Treasury’s Explanatory Notes to the Financial Services Bill as brought from the House of Commons on 23rd May 2012: www.publications.parliament.uk/pa/bills/lbill/2012-2013/0025/en/2013025en.pdf

¹² As set out in paragraph 2.163 of the Treasury’s June 2011 document: ‘A new approach to financial regulation: the blueprint for reform’.

Directive	Lead regulator for passporting
The Banking Consolidation Directive [as amended] The First, Second and Third Non-life Insurance Directives The Consolidated Life Directive The Reinsurance Directive	PRA
The UCITS Directive MiFID The Insurance Mediation Directive	PRA, for outward passporting of dual-regulated firms (including therefore e.g. outgoing IMD passporting rights exercised by a UK bank). FCA, for outward passporting of other UK firms. FCA, for all inward passporting under these Directives

- 8.9 This table illustrates how the proposed changes to SUP 13, 13A and 14 will impact on dual-regulated firms and on firms regulated only by the FCA.
- 8.10 Throughout the amended Handbook text, we have included updated contacts and addresses where known. As for the rest of the Handbooks, outstanding areas will be completed before final publication.

Transitional arrangements

- 8.11 We expect that transitional arrangements will cover existing passports and the treatment of outward and inward passporting notifications that span legal cutover. Details of these arrangements will be given ahead of legal cutover.

Summary of key Handbook changes to SUP 13

- 8.12 SUP 13 is concerned with the exercise of passport rights by UK firms under the relevant Single Market Directives and in accordance with FSMA.

Changes required

- 8.13 SUP 13 will be updated to reflect the new responsibilities and processes under the Bill related to UK firms exercising passporting rights.
- 8.14 A UK firm wishing to passport must provide the required notification to ‘the appropriate UK regulator’ under the relevant Directive, who will then process the notification and – if agreed – forward it to the relevant Host State regulator(s), within the required timeframe under the Directive in question.
- 8.15 To minimise the operational impact on firms, the same method for submission of passport notifications will continue to be used by both regulators immediately after legal cutover (i.e. the ONA system, or paper). ONA will, however, undergo minor changes to reflect its

ownership by the FCA. The new website address for ONA is not included in the accompanying draft Handbook text as details of legal cutover systems are still to be finalised.

- 8.16** The updated SUP 13 will explain that where the PRA is the appropriate UK regulator, it will consult the FCA before consenting to an outward notification (unless the notification is being made under the IMD). Where the FCA is the appropriate UK regulator, it will consult the PRA before consenting to an outward notification if the UK firm's immediate group¹³ includes a PRA-authorized firm. Under the Bill, consent by the FCA or PRA may only be refused in certain circumstances and may be appealed by a firm.

SUP 13 Annexes 1-6 – notification forms

- 8.17** The passporting notification forms to be used by UK firms will be updated and will be accessible online.

Q12: Do you have any comments on our proposed approach to updating SUP 13?

Q13: Are there any additional aspects of the changes introduced by the Bill for outward passporting that you feel should be covered by SUP 13?

Summary of key Handbook changes to SUP 13A and SUP 14

- 8.18** SUP 13A is concerned with circumstances when an EEA firm will or will not require authorisation under FSMA to operate in the UK – including the need for 'top-up' authorisations. The chapter also includes guidance on which FSA rules will apply to an incoming firm – including an Annex 1 covering each Handbook module, and an Annex 2 confirming which matters are reserved to a firm's Home State regulator.
- 8.19** SUP 13A also includes temporary rules which expired in October 2008.
- 8.20** Finally, SUP 13A includes an Annex 3 which specifies the format to be used by UCITS management companies in applying for approval to manage a UCITS scheme established in the UK. This annex has the status of a rule.
- 8.21** SUP 14 is concerned with changes to the details of notifications provided by incoming EEA firms, or changes to the circumstances of an EEA firm that will affect their need for authorisation under FSMA to operate in the UK (including the need for top-up authorisations).

¹³ 'immediate group' is defined in s421ZA of FSMA

Changes required

- 8.22** SUP 13A and SUP 14 will be amended to reflect the new process under the Bill to be followed when EEA firms wish to operate in the UK under one of the Single Market Directives. References to the broader legal framework at legal cutover and to applicable legal requirements also need to be amended.
- 8.23** Under the new model, ‘the appropriate UK regulator’ (FCA or PRA) will receive a notification from the relevant Home State regulator of an inwardly passporting firm. Where the PRA receives a notification from a Home State regulator, it must always copy the FCA. Where the FCA receives a notification from a Home State regulator, the FCA must copy the PRA in cases prescribed by the Bill where the notification relates to a PRA-regulated activity, a PRA-authorized firm or a firm whose immediate group¹⁴ includes a PRA-authorized firm. The appropriate regulator(s) must then process the notification within the required timeframe under the Directive, consulting the other as necessary (except for notifications under the IMD), and to prepare to supervise the firm as necessary. This preparation will include informing the incoming firm of any applicable UK provisions.
- 8.24** Where an EEA firm wishes to manage a UK UCITS, the FCA is expected to be the appropriate UK regulator, but the FCA must give the PRA a copy of the application if the firm is a PRA-authorized firm or if the firm’s immediate group¹⁵ includes a PRA-authorized firm.
- 8.25** We propose new text for SUP 13A and SUP 14 to remind firms that such sharing of information and formal consultation will be a feature of the new FCA and PRA processes and interaction.
- 8.26** The Bill allocates other passporting roles to the appropriate UK regulator, and these will be supported by the amended EEA Passport Rights Regulations. These include aspects such as where an operator of a UK UCITS wishes to market that UCITS outside the UK, PRA and FCA responsibilities in respect of ‘treaty firms’, and the treatment of EEA firms who qualify for UK authorisation outside their passported activities (including where ‘top-up authorisations’ are required). The draft updated text of SUP 13A and SUP 14 reflects these changes, as currently known.

SUP 13A.9 – The precautionary measure rule for incoming EEA firms

- 8.27** Section 13A.9 comprises temporary rules and provisions which expired in October 2008, designed to cover the position of incoming firms within the scope of MiFID but with Home States which had not fully implemented MiFID across the EEA. Since all Member States should have now implemented MiFID, and the provisions have expired, we propose to delete 13A.9.

Q14: Do you have any comments on our proposed deletion of

¹⁴ ‘immediate group’ is defined in s421ZA of FSMA

¹⁵ ‘immediate group’ is defined in s421ZA of FSMA

SUP 13A.9?

SUP 13A Annex 1 – Application of the Handbook to Incoming EEA Firms

8.28 Consequential changes will be required to SUP 13A Annex 1 as a result of changes to the FSA Handbook to produce the PRA and FCA Handbooks. These changes will affect the substance of the referenced requirements and the responsibilities for applying the updated set of requirements. Because of this, we believe that it is not practical to consult on an updated version of Annex 1 at this stage, until the new Handbooks are more advanced. Should the changes be substantive enough to require consultation, we propose to consult on an updated version of Annex 1 at a suitable point ahead of legal cutover. If the changes are minor, they may not require consultation.

Q15: Do you have any comments on our proposed approach to updating SUP 13A and SUP 14?

Q16: Are there any additional aspects of the changes introduced by the Bill for inward passporting, top-up authorisations, the application of UK requirements to incoming EEA firms, or related matters, that you feel should be covered by SUP 13A and SUP 14?

Cost benefit analysis

8.29 Please see Annex 1.

Contact

Comments should reach us by 12 December 2012. Please send them to:

Mike Deveney
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 4182
Email: cp12_24@fsa.gov.uk

9

Changes to the Supervision Manual (SUP 15): Notifications to the FSA

Introduction

- 9.1 In this chapter we explain our proposed amendments to Chapter 15 of the Supervision Manual (SUP 15) concerning regulatory notifications to the FSA.
- 9.2 The text of the proposed amendments is set out at Appendix 13.

Overview of Bill changes

- 9.3 The Bill does not specify a new process for SUP 15 notifications but some changes are required to our procedures.

Summary of key Handbook changes for all firms

- 9.4 This section sets out the proposed amendments to SUP 15 to reflect the process changes for both dual-regulated and FCA-only regulated firms.

Use of the term 'appropriate regulator'

- 9.5 SUP 15 makes reference to the term 'appropriate regulator', which means the PRA in the PRA Handbook and the FCA in the FCA Handbook. New SUP 15.2.5G reminds dual-regulated

firms that where the term is used in a provision which appears in both the PRA and the FCA Handbooks, ‘appropriate regulator’ therefore means in effect both the FCA and PRA.

Changes applicable to dual-regulated firms

9.6 This section sets out the amendments to SUP 15 that are only relevant to dual-regulated firms.

Submission of notifications

9.7 SUP 15 sets out specific notification requirements for firms related to serious incidents (for example, failing to meet the Threshold Conditions) and other non-routine notifications (including requirements to notify us of a change in the firm’s core details e.g. address, telephone, etc).

9.8 The table below indicates to which regulator we propose dual-regulated firms should send their notifications. We propose that certain notifications should be sent to both the FCA and the PRA, while others, largely those related to FCA responsibilities, should be sent only to the FCA.

9.9 As explained in Chapter 1, online addresses for electronic submissions will be updated and communicated ahead of legal cutover.

9.10 The following table sets out to which regulator each type of notification should be sent by a dual-regulated firm:

Reference		Submit to	
		Both PRA & FCA	FCA-only
SUP 15	Type of notification		
SUP 15.3			
15.3.1R	Matters having a serious regulatory impact	√	
15.3.11R	Breaches of rules and other requirements under FSMA	√	
15.3.15R	Civil, criminal or disciplinary proceedings against the firm	√	
15.3.17R	Fraud, errors and other irregularities	√	
15.3.21R	Insolvency, bankruptcy and winding up	√	
15.3.22-15.3.25D	Lloyd’s of London	√	
SUP 15.4			
15.4.1R	Notified Persons	√	
SUP 15.5-7			
15.5	Core information	√	
15.6	Inaccurate, false or misleading information	√	
15.7	Form and method of notification	√	
SUP 15.8			
15.8.1R	Management of occupational pension scheme assets		√
15.8.2R	Individual Pension Accounts		√

Reference		Submit to	
15.8.3R	Insurers' commission clawback		√
15.8.4R	Money service business and trust providers		√
15.8.6R	Delegation by UK UCITS management companies		√
15.8.8R	CTF providers		√
15.8.9R	BIPRU firms – default on obligations	√	
SUP 15.9			
15.9.1R	Members of financial conglomerates	√	
15.10	Suspicious transactions reporting		√

Changes applicable to FCA-only regulated firms

- 9.11** We propose no substantive changes relevant to firms regulated only by the FCA in relation to SUP 15.

Q17: Do you have any comments on our proposed approach to amending SUP 15?

Cost benefit analysis

- 9.12** Please see Annex 1.

Contact

Comments should reach us by 12 December 2012. Please send them to:

Kaajal Shah
 Financial Services Authority
 25 The North Colonnade
 Canary Wharf
 London E14 5HS
 Telephone: 020 7066 0368
 Email: cp12_24@fsa.gov.uk

10

Changes to the Supervision Manual: SUP 16.2, 16.3, 16.4 (Annual controllers report), 16.5 (Annual close links reports), 16.6 (Compliance reports) and 16.10 (Verification of standing data)

Introduction

- 10.1** Chapter 16 of the Supervision Manual (SUP 16) sets out reporting requirements for firms. In this chapter we explain various proposed amendments to SUP 16.2 (Purpose) 16.3 (General provisions on reporting), 16.4 (Annual controllers report, 16.5 (Annual close links reports), 16.6 (Compliance reports) and 16.10 (Verification of standing data).
- 10.2** The text of the proposed amendments is set out at Appendix 15.

Overview of Bill changes

- 10.3 The Bill does not specify a new process for notifications, but the existence of two regulators necessitates some clarification of the appropriate regulator and the submission mechanism.

Summary of key Handbook changes for all firms

- 10.4 This section sets out the proposed amendments to SUP 16.2, 16.3, SUP 16.4, 16.5, 16.6 and 16.10 relevant to both FCA-only regulated and dual-regulated firms. They are as follows:

Submission of notifications and returns

- 10.5 SUP 16.3 sets out the current system, email and postal submission requirements for notifications and returns covered by SUP 16. After legal cutover, it is envisaged that information submitted via an online system, for example GABRIEL and ONA, will continue to be submitted through the relevant current system.
- 10.6 We propose to review whether other submission methods should be accommodated after legal cutover, or whether all submissions should be made via online systems (where relevant) or email, and no longer by post. Any proposals for such a change from postal submission to email submission will be consulted on in the coming months. Therefore we have not included in this consultation provisions in SUP 16 that may be amended by this. Any proposed changes will take effect at legal cutover.

Regulator reviewing submissions

- 10.7 The term ‘appropriate regulator’ in SUP 16.4, 16.5, 16.6, 16.10, 16.12 and 16.16 is defined by the first element of the glossary definition. For these subsections of SUP 16 this means that for dual-regulated firms both the PRA and the FCA will be reviewing these returns.
- 10.8 The table below indicates which regulator we expect to be primarily interested in reports sent in by dual-regulated and FCA-only firms. The table also indicates the relevant amended SUP provisions.

Report	SUP 16 section	Appropriate regulator for dual-regulated firms	Appropriate regulator for FCA-only regulated firms
Annual controllers report	SUP 16.4	PRA and FCA	FCA
Annual close-links report	SUP 16.5	PRA and FCA	FCA
Compliance reports	SUP 16.6	PRA and FCA	FCA
Persistency reports	SUP 16.8	FCA	FCA
Appointed representative reports	SUP 16.9	FCA	FCA
Standing data	SUP 16.10	PRA and FCA	FCA
Product sales	SUP 16.11	FCA	FCA
Regulatory reporting	SUP 16.12	PRA and FCA	FCA
Payment services reports	SUP 16.13	FCA	FCA
CASS returns	SUP 16.14	FCA	FCA

Report	SUP 16 section	Appropriate regulator for dual-regulated firms	Appropriate regulator for FCA-only regulated firms
E-Money regulations	SUP 16.15	FCA	FCA
Prudential valuation reports	SUP 16.16	PRA and FCA	FCA

Summary of key Handbook changes for dual-regulated firms

- 10.9** This section sets out the amendments to SUP 16 that are only relevant to dual-regulated firms. They are as follows:

Use of interim data

- 10.10** Additional guidance has been added to clarify how the PRA will use interim data in its supervision. The additional guidance confirms that SUP 16.6 information helps the PRA to determine whether a firm is complying with the requirements applicable to its business and what procedures the firm is operating to ensure its compliance (see amended SUP 16.6.3B).

Summary of key Handbook changes for FCA-only regulated firms

- 10.11** We propose no substantive changes relevant for firms regulated only by the FCA in relation to SUP 16.

Q18: Do you have any comments on our proposed approach to amending SUP 16?

Cost benefit analysis

- 10.12** Please see Annex 1.

Contact

Comments should reach us by 12 December 2012. Please send them to:

Ferdinand Ley
 Financial Services Authority
 25 The North Colonnade
 Canary Wharf
 London E14 5HS

Telephone: 020 7066 3726
 Email: cp12_24@fsa.gov.uk

11

Changes to the Supervision Manual (SUP 18): Transfers of business

Introduction

- 11.1** In this chapter we explain various proposed amendments to Chapter 18 of the Supervision Manual (SUP 18), which sets out guidance on transfers of insurance business. These changes reflect the effect of changes to FSMA and to other legislation that are proposed in the Bill and related draft Orders, including those that set out the roles and responsibilities of the PRA and FCA in relation to such transfers. In addition, we are proposing to update the guidance in SUP 18 to reflect other changes to relevant legislation and to reflect current practices.
- 11.2** The text of the proposed amended SUP 18 is set out at Appendix 17.

Background

- 11.3** SUP 18 contains guidance to firms on a range of issues relating to transfers of insurance business. These transfers follow a statutory process set out in FSMA and related secondary legislation, which includes the right of the FSA and any person concerned who may be adversely affected by the scheme to be heard by the Court. In addition, SUP 18.4 contains guidance relating to transfers of insurance business from a Friendly Society – these transfers are currently approved by the FSA.

Overview of Bill changes

- 11.4** The Bill sets out the intended revised process for transfers of insurance business ('Part VII transfers of business'). The revised Part VII of FSMA will stipulate which of the PRA and FCA is 'the appropriate regulator' for proposed transfers¹⁶, and some aspects of how they should co-operate on individual transfers. The Bill envisages that the future arrangements will also be covered under a proposed Memorandum of Understanding (MoU) between the PRA and FCA. A draft of this MoU currently appears on our website (at www.fsa.gov.uk/static/pubs/mou/fca_pra.pdf). Under the MoU, the PRA will lead the process. Applicants should discuss initial proposals with their usual supervisory contacts and provide initial information to the PRA (who will share it with the FCA). The PRA will consult with the FCA throughout the insurance business transfer process, including on the appointment of the Independent Expert and the form of the report to be provided by the Independent Expert, and before approving any notices published in the press and sent to policyholders. Both regulators will have the right to be heard at the Court hearings. Under a related draft Order¹⁷, the PRA will have responsibility for confirming transfers of insurance business from Friendly Societies, again after consultation with the FCA.

Transitional arrangements

- 11.5** We expect that transitional arrangements will cover the treatment of applications received by the FSA before legal cutover but not determined by legal cutover. Details of these arrangements will be given ahead of legal cutover.

Summary of key Handbook changes for all firms

- 11.6** This section sets out the amendments to SUP 18 that are relevant to firms transferring insurance business, all of which will be dual-regulated. We propose that SUP 18 is amended in the following way.
- To reflect the changes to the UK regulatory structure and responsibilities as outlined above.
 - To remove guidance that claims to provide an interpretation of the legislation (for example part of SUP 18.1.6), which may be seen as placing inappropriate constraints on the decision making of either regulator, or which does not add information of real value to users of the guidance. In particular, SUP 18 currently provides some elaboration on how the FSA will consider transfers in the light of its regulatory objectives and Principles (much of SUP 18.2.2 to 18.2.5 and 18.2.53). These sections would need considerable updating to reflect the PRA and FCA objectives and the future application

¹⁶ In Part VII 'the appropriate regulator' means, (a) in relation to a scheme in respect of which the authorised person concerned is a PRA-authorized person, the PRA; and (b) in any other case, the FCA.

¹⁷ Most recent copy at time of writing: www.hm-treasury.gov.uk/d/fin_fs_bill_draft_si_mutuals_transfer_order_jan2012.pdf

of relevant regulatory principles, and could be read as setting out a more limited set of considerations than is in fact the case in assessing Part VII transfers. We propose to replace these sections in the Handbook with high level references to the PRA and the FCA assessing Part VII transfers in light of their respective statutory objectives. We believe it would be difficult to be more meaningfully specific with regard to the PRA and FCA approach to transfers given the individual nature of each transaction.

11.7 In addition, some other changes will:

- add proposed new guidance at SUP 18.1.8 to clarify that legislation in respect of other transactions does not negate the requirements under Part VII of FSMA;
- improve the outline of the regulators' expectations of the information that should be provided by firms. For example, we propose to add new guidance at SUP18.2.20 to specify some of the information the regulators will usually need to see when assessing the independence of a person nominated as a proposed Independent Expert and the extent to which that nominee will have enough detachment, bearing in mind the closeness of any previous or existing professional or commercial relationship, to provide an objective opinion;
- add proposed new guidance at SUP 18.2.53A to supplement SUP 18.2.46 and amended SUP 18.2.5, regarding the importance placed by the regulators on the timely provision of adequate information to relevant consumers to enable them to make appropriate assessments about the proposed scheme in the light of their individual circumstances. Where the regulator(s) are unable to satisfy themselves in relation to the provision of such information, either or both may oppose the scheme;
- add proposed new guidance in SUP 18.2.57A, 18.2.57B and 18.2.57H to reflect the practice which has developed whereby the regulator(s) will provide a report to the Court regarding a proposed Part VII transfer of business. Guidance in SUP 18.2.57C to 18.2.57H and 18.2.58A describes the information that the PRA and the FCA would expect to receive in order to inform its reports to the Court, and SUP 18.2.59A to 18.2.59C provides guidance on who should receive, subject to any necessary consents, a copy of that report. The guidance does not though preclude requests by either regulator for additional or wider information on proposed transfers of business;
- add proposed new guidance in SUP 18.2.14A to remind firms that we will only commence the process of considering a proposed transfer of business (other than for transfers under the Friendly Societies Act 1992) when the relevant fees (as described in our FEES manual) have been received;
- update the guidance to take account of other earlier changes to the legislation (especially in relation to reinsurance); and
- add proposed new guidance at SUP 18.2.60A-60B regarding post transfer advertising.

Q19: Do you have any comments on our proposed approach to updating SUP 18?

Cost benefit analysis

11.8 Please see Annex 1.

Contact

Comments should reach us by 12 December 2012. Please send them to:

William Hewitson/ Stuart Hicks
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 0152/0480

Email: cp12_24@fsa.gov.uk

12

Other changes to the PRA and FCA Handbooks

Introduction

- 12.1** When the FCA and the PRA acquire their legal powers, the FCA and PRA rulebooks will comprise provisions adopted from the FSA's Handbook, in accordance with the regulators' objectives and powers. The process is detailed in the introduction to this CP.
- 12.2** As part of the designation process, the FCA and PRA have identified some Handbook modules where the designation of existing FSA provisions by one or by both of the new regulators would not be appropriate, but where the underlying powers or responsibilities covered within the provisions remain valid. In some cases, only one regulator will choose to adopt these provisions, and in other cases neither regulator will keep them.
- 12.3** This chapter outlines these modules, to avoid any confusion when the designation of the Handbooks is made public, and to assist users with locating any replacement material. Other relevant proposed deletions identified may be flagged in future Regulatory Reform CPs.
- 12.4** This chapter does not list *individual* provisions or small subsections of the FSA Handbook that the PRA or FCA will not adopt because: (a) they cannot be made under the regulators' powers; or (b) the provisions do not advance the regulators' objectives.

Not designated by either the PRA or FCA

- 12.5** The provisions listed below will not appear in either the PRA or the FCA Handbook.
- Expired and deleted provisions: The PRA and the FCA will not adopt transitional and other provisions that have expired, or that are already marked as deleted in the FSA Handbook.

- Appendix 1 to the Supervision Manual (SUP): The PRA and the FCA will not adopt SUP Appendix 1 at legal cutover. It will be deleted in its entirety. We believe the Appendix has limited value for firms, and is considerably out of date.
- Financial Stability and Markets Sourcebook (FINMAR), Chapter 3: This chapter sets out guidance on the assessment of conditions contained in the Banking Act 2009. It will not be adopted by the PRA, so will be deleted in its entirety at legal cutover, because it adds limited useful information beyond the Banking Act 2009.
- Complaints Against the FSA (COAF): The new regulators will consult on replacement material before legal cutover. This replacement material will be published outside of the PRA and FCA Handbooks.

12.6 In addition, neither the PRA nor the FCA will adopt the individual provisions listed below:

- SUP TP 1.3-1.4: These provisions transition written concessions from pre-FSA regulators across to the FSA. We propose to delete these transition provisions (TPs), with the effect that pre-FSA concessions, which have not been considered and transformed into FSA concessions following the transition to the FSA, will fall away at legal cutover. From our records, we have identified only one outstanding concession, though we would encourage any firms relying on pre-FSA material to respond to this consultation.
- COBS TP 2 2.15R and SUP TP 1.6: These transitional provisions (relating to the grandfathering of certain authorisations given under the Electronic Money Regulations) are redundant, as there are no longer any persons deemed to have been granted authorisation by virtue of regulation 74 of those Regulations. The referenced transitional provision in regulation 74 expired on 1 July 2011.
- SUP TP 1.2.12.A: This transitional provision relating to reporting expired when the Financial Groups Directive was implemented in the UK.
- SYSC 3.2.5A and B: These provisions are addressed to banks, within a chapter that applies only to insurers, and so should be deleted.
- COLL 6.6.18G(1): This Guidance about collective investment scheme management and conflicts of interest concerns a Transitional Provision that has been deleted, so this guidance provision can also be deleted.
- IPRU-INV Transitional Provision 1 will be deleted in its entirety, since the only remaining element has now expired.

12.7 An instrument setting out these proposed deletions can be found at Appendix 21

Not designated by the PRA

- 12.8** The modules listed below will not appear in the PRA Handbook, but will be adopted by the FCA (updated as necessary¹⁸). This section covers only modules or significant sub modules for which the designation rationale would be unclear without further explanation, and where it may be beneficial to highlight the existence of alternative or replacement guidance.
- **Threshold Conditions Module (COND):** The PRA will provide some interpretative detail in respect of certain of the Threshold Conditions in the Approach Documents. These Approach Documents will be issued in October this year.
 - **SUP Chapter 1: Approach to Supervision.** The PRA will set out its approach to supervision in its Approach documents.
 - **SUP Chapter 7: Own Initiative Variations of Permission:** The PRA will set out its approach to Own Initiative Variations of Permission as appropriate in other PRA documents.
 - **SUP Chapter 9: Individual Guidance:** The PRA will no longer follow the approach set out in SUP 9.
 - **Enforcement Guide and Decision Making Procedures Manual:** The PRA will produce a set of disciplinary powers and decision making policies which will be consulted on before legal cutover.
 - **Perimeter Guidance Manual:** The FCA will take responsibility for the policing of the regulatory perimeter. The PRA will replicate material contained within PERG with minor amendments on the definition of contracts of insurance on its website.

Changes to actions for damages

- 12.9** The Bill amends the new regulators' approach to Actions for Damages in their respective Handbooks. Currently (under s.150 of FSMA), unless the rules state otherwise, FSA rules, excluding those directly related to financial resources and certain others, are actionable by a private person (and in some cases other persons) who has suffered a loss as a result of a contravention of the rule. The amended s.138D of FSMA proposes that all rules in the PRA Handbook are non-actionable unless stated otherwise.
- 12.10** Where the PRA intends to adopt rules that are currently actionable, we propose to accept the new, automatic, non-actionable status in some cases.
- 12.11** The chapters listed below are currently actionable in the FSA Handbook under s.150 of FSMA, but will not be actionable when they are adopted by the PRA, under s.138D of amended FSMA. Unless otherwise specified, this is because we have not identified a benefit to private persons in retaining rights of action, either in totality or that would be additional to existing protections, such as creditor rights or claims against the FSCS. Maintaining

¹⁸ FCA proposals for necessary changes will be consulted on over the coming months in further CPs.

action for damages provisions in these circumstances would potentially pose an additional regulatory cost as a result of Handbook maintenance.

- Supervision manual (SUP) 5, 6, 8, 11, 15, 16.4 and 16.5
- General Provisions (GEN)
- Compensation Sourcebook (COMP) 14.4.6, 16 and 17
- Credit Union Sourcebook (CREDS) – rules that are designated by the PRA in this module, and which are not currently exempt from being actionable given their link to financial resources will no longer be actionable.

Q20: Do you have any comments on other changes being made to the FCA and PRA rulebook?

Q21: Do you have any comments on the proposed deletion of SUP TP 1.3 and 1.4 in particular?

Q22: Do you have any comments on the proposed changes to actions for damages in the PRA rulebook?

Contact

Comments should reach us by 12 December 2012. Please send them to:

Ashleigh Collins
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 0678
Email: cp12_24@fsa.gov.uk

Annex 1

Cost benefit analysis

1. This annex provides a cost benefit analysis of the policy changes outlined in this CP.
2. It is our expectation that the proposals set out in this CP will be made by the Boards of the new regulators, the FCA and PRA, rather than by the FSA. As a result, the relevant cost benefit analysis (CBA) requirements are those set out in sections 138I and 138J of the revised version of FSMA rather than those in section 155 of the original version of FSMA. The FCA and PRA will be required to carry out and publish a CBA when proposing draft rules and when making rules which are significantly different from the draft consulted on. In particular, they will be required to publish ‘an analysis of the costs together with an analysis of the benefits...and an estimate of those costs and of those benefits’. However, if, in a regulator’s opinion, the costs or benefits cannot reasonably be estimated or it is not reasonably practicable to produce an estimate, an estimate need not be provided; but in this case, the regulator must explain why it is of that opinion. Finally, no CBA is required if a regulator considers that there will be no increase in costs or there will be a cost increase of minimal significance.
3. We consider that the CBA set out below meets the revised FSMA CBA requirements. In this case, we do not expect any of the proposals to have cost increases of more than minimal significance. As such, we consider that it would be open to the regulators to decide not to publish a CBA. We are publishing a CBA in any event for completeness and this publication should not be regarded as a precedent as to how the regulators will proceed in the future.
4. Sections 138I and 138J of the revised version of FSMA are currently before Parliament and we will review the CBA in the event that those requirements change.
5. Most proposals in this CP are driven by legal considerations relating to the requirements of the Financial Services Bill, and the creation of the new UK regulatory structure. Most proposals do not address market failures so we do not expect any economic benefits to arise. Nevertheless, the proposals seek to minimise the risk of regulatory failure in the future by helping to ensure that there is legal certainty and clarity for firms in relation to their responsibilities as FCA and/or PRA authorised entities. The remainder of this CBA annex therefore considers the extent of the direct costs to firms and the FCA/PRA arising from the proposals. We do not believe that these costs will be material.

GEN 4 (status disclosure) and GEN 5 (use of logos)

6. We propose to make the following changes to regulatory disclosure and the use of the regulators' logos:
 - amend the prescribed status disclosure wording;
 - amend the disclosure requirements for UK branches of non-EEA firms; and
 - remove the general licence for firms to use the FSA's logo.
7. The proposed amendments to the prescribed status disclosure wording are a direct consequence of implementing the regulatory reform of the creation of the FCA and PRA to replace the FSA.
8. The proposed amendments to the disclosure requirements for UK branches of non-EEA firms will make it clear that these branches will be subjected to only limited regulation by the PRA so that customers or counterparties can make informed decisions in dealing with UK branches of non-EEA firms.
9. The proposal to remove the general licence for firms to use the FSA's logo is a change in policy. It is not clear that the voluntary use of regulators' logos by firms leads to any additional benefit over and above the required status disclosure. Instead, to the extent that the voluntary use of regulators' logos may cause some confusions among consumers (e.g. whether the communication is from the firm, or the regulators), there is the additional benefit of removing this confusion.
10. The costs of our proposed amendments to GEN 4 and GEN 5 are primarily the one-off costs to firms of updating their stationery or electronic equivalent. Our proposals do not change the frequency of our status disclosure requirements or their letter format.
11. The extent to which firms will incur one-off costs will depend on whether they update their stocks of stationery during the proposed six month transitional period. We expect that this will be most likely for small firms. Taking an average number of customers for these firms and an average number of relevant communications per year to each customer, we estimate the one-off costs for the small firm could range from less than £100 to no more than £2,500.
12. Furthermore, there might be ongoing costs for UK branches of non-EEA overseas firms from an increased number of consumer queries regarding the extent of PRA regulation that applies to them. Approximately 200 such branches exist in the UK. As some of them may not have any retail clients, and are therefore not affected by the disclosure requirements to retail clients, this represents the upper range of the number of firms potentially affected. We do not believe that the aggregate cost of this proposal for the industry will be material.

SUP 5 (skilled persons)

13. Our proposed amendments to the existing regime are being made to bring into effect the following three key changes under the Bill:
 - the extension of the s.166 power for the FCA to cover recognised investment exchanges;
 - enabling the regulators to contract directly with the Skilled Person (and to levy a fee to recover the costs of the Skilled Person) rather than requiring the firm concerned to contract with the Skilled Person; and
 - enabling the regulators to commission a Skilled Person to collate or keep up to date information where a regulated firm has breached regulatory requirements to do so (s.166A).
14. The costs of a report by a Skilled Person will vary depending on the nature and complexity of the matter being reported on. In 2011/12, the FSA commissioned 111 reports with a total cost of £31m and the costs per report ranged from just under £3,000 to £3m. These are costs incurred by the firm or individual concerned in producing a report by a Skilled Person, and do not include costs associated with any remedy actions required as a result of the report.
15. Outcomes of reports from Skilled Persons under s.166 can include, for example, the identification of redress payable to consumers following confirmation of poor sales practices or quality of advice, implementation of enhanced systems and controls following the assessment of system and control weaknesses, identification of improvements to governance structures to enhance monitoring and oversight. Where appropriate, an enforcement investigation may be considered, for example where the report by the Skilled Person had identified a breach of Threshold Conditions or significant consumer detriment. Therefore the benefits of a report from Skilled Persons vary, and can be significant.
16. We currently have guidance on when and in what way we may require a Skilled Persons report under the existing power set out in s.166 FSMA 2000 and rules imposing certain duties on firms regarding the Skilled Person which are set out in Chapter 5 of the Supervision Sourcebook (SUP). The regulator will assess the expected costs and benefits of each report or project commissioned under s.166 or s.166A, as described in the existing policies for using reports by Skilled Persons in SUP 5.3.

Recognised Investment exchanges

17. Bringing recognised investment exchanges into the scope of SUP 5 would result in additional costs when the regulators exercise their power to require a report by a skilled person. These costs will be borne initially by the recognised investment exchange concerned. However, the recognised investment exchanges will recover some or all from customers/counterparties. As discussed in this CP, a report by Skilled Persons could raise the level of recognised investment exchanges' compliance with the relevant regulatory

requirements, which helps deliver the benefits of these regulations. It is therefore important to assess the costs and benefits of each individual case to ensure that the use of a Skilled Person is proportionate.

Amendments to SUP 5.4 (Appointing and reporting process)

18. On one hand, where the regulator may seek to contract directly with the Skilled Person (s.166 (3)(b)), the regulator will conduct a formal procurement process which will include technical and commercial considerations to fairly assess the capabilities of the Skilled Person and the costs to be charged on to the firm, and to use where possible the potential 'buying power' of the regulators. A transparent and consistent procurement by the regulator could lead to more cost-efficient contracts.
19. However, there are other factors that could push up the costs when regulators contract with Skilled Persons directly.
 - Firms concerned could be subject to additional VAT costs (up to 20% depending on individual firm's tax circumstance) when the regulators contract directly with skilled persons and seek to recover the total fees (including tax) incurred from the regulated firms.
 - Some Skilled Persons, out of future commercial interests, may not want to compete in providing the service. As a result, the regulator-appointed Skilled Persons could have less knowledge of the firm concerned, or there may be fewer suppliers with whom the regulators can contract. Therefore producing such a report could take longer and incur additional costs.
20. Where the regulator contracts directly with the Skilled Persons, the Skilled Persons act as agents of the regulator. This could eliminate some potential conflicts of interest that exist when the contractual relationship exists between the firm concerned and the Skilled Person, which would lead to an improvement in the standard of Skilled Person's reports.
21. The trade-off between the costs and benefits is likely to vary depending on the circumstances of each case. It is therefore important to assess the costs and benefits of each individual case to ensure that the use of the power of 'contracting directly' is proportionate.

Amendments to implement section 166A

22. Where the regulator makes use of the new power to appoint a Skilled Person to collate and update information in the event of a regulatory breach relating to maintenance of such information, there will be costs associated with the appointed Skilled Person's activity. However, such information could be beneficial, for example, within the recovery and resolution process where the information may be used within a controlled wind down of a financial institution or in support of a recovery plan, or for ensuring that the remedy of some serious regulatory breach is effective.

23. The trade-off between costs and benefits will depend on the nature and complexity of the matter being reported on and the potential impact arising from the issue being assessed. The costs and benefits will be assessed and considered, following SUP 5.3, for each report commissioned.

SUP 6 (applications to vary and cancel a permission), SUP 8 (waiver and modification of rules), SUP 11 (controllers and close links), SUP 13, 13A, 14 (passporting), SUP 15 (notifications to the regulator) and SUP 16 (reporting requirements)

24. Most proposed changes to SUP 6, SUP 8, SUP 11, SUP 13, SUP 13A, SUP 14, SUP 15 and SUP 16 arise directly as a result of the introduction of the Financial Services Bill, and the creation of the new UK regulatory structure.
25. As firms adjust to the new UK regulatory structure, it is likely that firms will incur some extra compliance costs. These will be initially in understanding and adjusting to the new PRA and FCA processes – particularly where firms are dual-regulated; and on an ongoing basis, in some cases, if firms will be required to submit information to both regulators. But we expect that any increase in costs will be of minimal significance and will decrease over time as firms become familiar with the new processes. We have also sought to minimise any new costs to firms at legal cutover by using existing IS systems for most information to be submitted to the regulators. The proposed change that waiver applications should be submitted by email, rather than via ONA should have minimal cost implications as most firms are already submitting them by email, and for those who do not at the moment, switching to email submission should not lead to a significant increase in costs.
26. There will be some additional costs for FCA and PRA in implementing and operationalising these proposed changes. The respective regulators will require some additional personnel and resources to update existing forms, systems and processes, and will need to build into their ongoing processes the need to consult each other. However, we do not envisage costs incurred by either regulator will be material.
27. In addition, the new consideration of the advancement of regulatory objectives when the PRA or FCA considers an application for a waiver or modification of a rule (reflected in SUP 8) could lead to marginally fewer waivers or modifications being granted. However, to the extent that this stops a regulator giving a direction waiving or modifying a rule that could adversely affect the advancement of their respective objectives, there are benefits associated with an effective regulatory regime.
28. The addition of criteria that regulators must take into account when considering publication of a waiver (reflected in SUP 8) could lead to marginally fewer waivers to be published. However, to the extent that this stops publication of waivers that would be detrimental to the UK financial systems, there are benefits associated with a stable financial system.

SUP 18 (transfers of business)

29. In general, the changes to the guidance described in the main CP text are intended to align this guidance more closely with our current practices in considering proposed transfers of business, and to reflect the changes to the UK regulatory structure and responsibilities. Therefore, we expect any incremental changes in costs will be of minimal significance to firms. We believe that our proposed overall approach to the guidance described in this chapter will be helpful to stakeholders, increase transparency, facilitate the Part VII process, and minimise the volume of queries from firms in this area.
30. The FCA's objectives to promote efficiency and choice in the market for financial services could, in theory, affect its approach to transfers that reduce competition, economic efficiency and consumer choices. However this is unlikely to significantly affect transfers of insurance business outcomes as competition law already prevents transfers that would result in a significant lessening of competition, and will continue to apply to such transfers following legal cutover.

Other changes to the PRA and FCA Handbooks

31. In general, the deletions proposed in Chapter 12 are driven by the current material no longer being appropriate or relevant to regulated firms once the new regulatory structure is in place, or are to be replaced with material that will be consulted on later (e.g. the scheme for complaints against the regulators).
32. The proposed deletion of transitional provisions relating to pre-FSA guidance could impact individual firms. However, we have identified only one outstanding written concession, and are inviting specific comments on this point.
33. The proposed removal of some Action for Damages should result in minimal costs to private persons because the rules in question would not be appropriate for such action, and other mechanisms (e.g. creditor rights or claims against the FSCS) exist by which private persons could seek redress.

Impact on mutual societies

34. Amended FSMA s.148K requires the PRA and the FCA to determine whether the impact of the proposed rules on mutual societies differs significantly from the impact on other firms.
35. To the extent that firms, mutual societies or otherwise, will be dual-regulated and not FCA-only regulated, the cost of complying with the amended rules will be marginally higher than they will be for FCA-only regulated firms (mutual or otherwise). For example, in the case of notifications regarding matters having serious regulatory impact, dual-regulated firms will have to notify both the PRA and the FCA instead of only the FCA.

36. However, as we expect our proposed amendments to incur minimal costs to firms, we believe the impact these rules will have on mutual societies will be minimal.

Q23: Do you have any comments on any part of this cost benefit analysis?

Q24: In the case of GEN 4 and GEN 5, do you have any comments about the costs and benefits of a longer transitional period?

Contact

Comments should reach us by 12 December 2012. Please send them to:

Ashleigh Collins
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 0678
Email: cp12_24@fsa.gov.uk

Annex 2

Compatibility Statement

1. It is envisaged that the final changes will be made by the Boards of the new regulators, the FCA and PRA, rather than by the FSA. We are therefore commenting on the compatibility of our proposals with the draft duties and objectives of the PRA and FCA as set out in the Financial Services Bill.

PRA general duties and principle of good regulation

2. Section 138J(2)(d) of FSMA (as proposed to be amended by the Financial Services Bill) states that the consultation undertaken by the PRA must include an explanation of the PRA's reasons for believing that making the proposed rules is compatible with its duties.
3. In discharging its general functions the PRA must, so far as is reasonably possible, act in a way that advances its general objective – i.e. promoting the safety and soundness of PRA authorised persons (section 2B(1) and (1) FSMA as proposed to be amended by the Financial Services Bill). We believe all proposed changes covered by this CP are compatible with this general duty.
4. In discharging its general functions so far as relating to a PRA-regulated activity relating to the effecting or carrying out of contracts of insurance, or PRA-authorized persons carrying on that activity, the PRA must, so far as is reasonably possible, act in a way which: (a) is compatible with its general objective and its insurance objective; and (b) the PRA considers most appropriate for the purpose of advancing those objectives (section 2C(1) and 2B(2) FSMA, as proposed to be amended by the Financial Services Bill). We believe all proposed changes are compatible with this duty.
5. In discharging its general functions, the PRA must also have regard to the regulatory principles (sections 2G and 3B FSMA as proposed to be amended by the Financial Services Bill). We believe all proposed changes in this CP are compatible with the general principles of good regulation. We have endeavoured to minimise costs, and believe that an appropriate balance has been struck between the need to ensure the PRA's regulatory objectives are fulfilled and the need to keep regulatory burdens to a minimum.

FCA general duties and principle of good regulation

6. Section 138I(2)(d) of FSMA (as proposed by the Bill) requires that a consultation undertaken by the FCA includes an explanation of the FCA's reasons for believing that making the proposed rules is compatible with its duties. We comment on these below.

In discharging its general functions the FCA must, so far as is reasonably possible, act in a way which (a) is compatible with its strategic objective, and (b) advances one or more of its operational objectives (section 1B(1) FSMA, as proposed to be amended by the Financial Services Bill).

7. Our approach to proposing the changes to the provisions and requirements covered by this CP is to preserve the benefits of the original requirements, standards and processes being amended, while making the necessary adjustments required by the Bill and the creation of the new UK regulatory structure, and making any legal updates (notably regarding transfers of business) that we believe are necessary as part of the review we have undertaken. This approach is compatible with the FCA's draft objective of ensuring that the relevant markets function well. We believe that the proposed changes covered by this CP are also compatible with the draft FCA operational objectives – particularly to secure an appropriate degree of protection for consumers, and to protect and enhance the integrity of the UK financial system.

In discharging its general functions the FCA must have regard to the regulatory principles set out in the Act (section 1B(5)(a) FSMA (as proposed to be amended by the Financial Services Bill)).

8. We believe that all proposed changes covered by this CP are compatible with the draft principles of good regulation. In particular, we have endeavoured to minimise additional costs while preserving benefits (see our CBA at Annex 1), and believe that an appropriate balance has been struck between the need to ensure the FCA's regulatory objectives are fulfilled and the need to keep regulatory burdens to a minimum.

Annex 3

List of questions

Chapter 2: Changes to General Provisions and Definitions

- Q1:** Do you have any comments on the proposed new text for GEN 2 to explain the interpretation of joint Handbook provisions?

- Q2:** Do you have any comments on the proposed new Handbook definitions included in Appendix 19?

Chapter 3: Proposed changes to regulatory disclosure and use of the regulators' logos

- Q3:** Do you have any comments on any of the proposed updated status disclosure wording?

- Q4:** Do you have any comments on our proposal to remove the option for firms to use either the logo of the FCA or PRA?

- Q5:** Do you agree with our proposal for a six month transitional period from legal cutover?

Chapter 4: Changes to the Supervision Manual (SUP 5): Reports by Skilled Persons

Q6: Do you have any comments on our proposals to amend SUP 5?

Chapter 5: Changes to the Supervision Manual (SUP 6): Applications to vary and cancel Part IV permissions and requirements

Q7: Do you have any comments on our proposed approach to amending SUP 6?

Chapter 6: Changes to the Supervision Manual (SUP 8): Waiver and modification of rules

Q8: Do you have any comments on our proposed approach to amending SUP 8?

Q9: Are there any additional aspects of the changes introduced by the Bill that you feel should be covered by SUP 8?

Chapter 7: Changes to the Supervision Manual (SUP 11): Controllers and close links

Q10: Do you have any comments on our proposed approach to amending SUP 11?

Q11: Are there any additional aspects of the changes introduced by the Bill that you feel should be covered by SUP 11?

Chapter 8: Changes to Supervision Manual Chapters 13, 13A, 14 and Appendix 3: Passporting and related issues

- Q12:** Do you have any comments on our proposed approach to updating SUP 13?
- Q13:** Are there any additional aspects of the changes introduced by the Bill for outward passporting that you feel should be covered by SUP 13?
- Q14:** Do you have any comments on our proposed deletion of SUP 13A.9?
- Q15:** Do you have any comments on our proposed approach to updating SUP 13A and SUP 14?
- Q16:** Are there any additional aspects of the changes introduced by the Bill for inward passporting, top-up authorisations, the application of UK requirements to incoming EEA firms, or related matters, that you feel should be covered by SUP 13A and SUP 14?

Chapter 9: Changes to the Supervision Manual (SUP 15): Notifications to the FSA:

- Q17:** Do you have any comments on our proposed approach to amending SUP 15?

Chapter 10: Changes to the Supervision Manual (SUP 16.2, 16.3, 16.4 (Annual controllers report), 16.5 (Annual close links reports), 16.6 (Compliance reports) and 16.10 (Verification of standing data):

- Q18:** Do you have any comments on our proposed approach to amending SUP 16?

Chapter 11: Changes to the Supervision Manual (SUP 18): Insurance transfers of business:

Q19: Do you have any comments on our proposed approach to updating SUP 18?

Chapter 12: Other changes to the PRA and FCA Handbooks:

Q20: Do you have any comments on other changes being made to the FCA and PRA rulebook?

Q21: Do you have any comments on the proposed deletion of SUP TP 1.3 and 1.4 in particular?

Q22: Do you have any comments on the proposed changes to actions for damages in the PRA rulebook?

Annex 1: Cost benefit analysis:

Q23: Do you have any comments on any part of this cost benefit analysis?

Q24: In the case of GEN 4 and GEN 5, do you have any comments about the costs and benefits of a longer transitional period?

Appendix 1

Changes to General Provisions (GEN) in the Handbook

GENERAL PROVISIONS LEGAL CUTOVER INSTRUMENT

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct 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 137A (The FCA’s general rules);
 - (2) section 137R (General supplementary powers);
 - (3) section 138C (Evidential provisions);
 - (4) section 139A (Power of the FCA to give guidance); and
 - (5) [section [X] (X)].
- B. The rule-making powers referred to above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Powers exercised by the Prudential Regulation Authority

- C. The Prudential Regulation 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 137E (The PRA’s general rules);
 - (2) section 137R (General supplementary powers);
 - (3) section 138C (Evidential provisions); and
 - (4) [section [X] (X)].
- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- E. This instrument comes into force on [*date*].

Amendments to the Handbook

- F. The modules of the FCA and PRA Handbooks of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary	Annex A
General Provisions manual (GEN)	Annex B

Citation

- G. This instrument may be cited as the General Provisions Legal Cutover Instrument 2012.

By order of the Board of the Financial Conduct Authority
[*date*]

By order of the Board of the Prudential Regulation Authority
[*date*]

Annex A

Amendments to Glossary

In this Annex, the text is all new and is not underlined.

general rule-making powers (1) In the *FCA Handbook* section 137A of the *Act*.

[FCA/PRA]

(2) In the *PRA Handbook* section 137E of the *Act*.

Annex B

Amendments to the General Provisions manual (GEN)

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

2 Interpreting the Handbook

2.2 Interpreting the Handbook

Evidential provisions

2.2.3 R Any *rule* in the *Handbook* which has the status letter "E" in the margin or
[FCA/ heading:
PRA]

- (1) is to be taken also to provide that contravention of the *rule* does not give rise to any of the consequences provided for by provisions of the *Act* other than ~~section 149~~ section 138C (Evidential provisions); and

...

2.2.4 G (1) The *rules* to which ~~section 149~~ section 138C of the *Act* applies
[FCA/ ("evidential provisions") are identified in the *Handbook* by the status
PRA] letter "E" in the margin or heading.

- (2) Other provisions in the *Handbook*, although also identified by the status letter "E" in the margin or heading, are actually not *rules* but provisions in codes and *GEN* 2.2.3R does not apply to them. These code provisions are ~~*GEN* 2.1.4E~~, and those provisions in the *Code of Practice for Approved Persons* (*APER* 3 and *APER* 4) and the *Code of Market Conduct* (*MAR* 1) with the status letter "E".

...

Cross-references in the Handbook

...

2.2.13A R Unless a contrary intention appears, to the extent that a provision made by the
[FCA/ *appropriate regulator* ('the referring provision') contains a cross-reference to
PRA] another provision that is not made by that regulator ('the referred provision')
the referred provision is to be taken to have been made by the *appropriate*
regulator to the extent necessary to make the referring provision function
with the full effect indicated by the reference.

References to writing

2.2.14 R ...
[FCA/

PRA]

2.2.15 [FCA/
PRA] G *GEN 2.2.14R* means that, for example, electronic media may be used to make communications which are required by a provision of the *Handbook* to be "in writing", unless a contrary intention appears, or the use of electronic media would contravene some other requirement ~~such as the requirement to treat customers fairly under Principle 6~~. *GEN 2.2.14R* does not, however, affect any other legal requirement which may apply in relation to the form or manner of executing a *document* or agreement.

2.2.15A [FCA] G An example of a requirement relevant to whether a communication required by a provision of the *Handbook* to be "in writing" may be made by use of electronic media is that to treat *customers* fairly under *Principle 6*.

...

Activities covered by general rules

2.2.17 [FCA/
PRA] R A general *rule* (that is a *rule* made ~~by the appropriate regulator under section 138 of the Act (General rule-making power)~~ the general rule making powers) is to be interpreted as:

...

...

Cutover: Application of provisions made by both the FCA and the PRA

2.2.23 [FCA/
PRA] R (1) This rule applies to *Handbook* provisions made by both the *FCA* and the *PRA*. It may affect their application by the *FCA* to *PRA-authorised persons* and *PRA-approved persons*, and may affect their application by the *PRA* to any *authorised person* or *approved person*.

(2) Where a *Handbook* provision (or part of one) goes beyond the *FCA*'s or *PRA*'s powers or regulatory responsibilities, it is to be interpreted as applied by that regulator to the extent of that regulator's powers and regulatory responsibilities only.

(3) The extent of a *Handbook* provision is to be interpreted as cut-back under *GEN 2.2.23R(2)* by the minimum degree necessary.

2.2.24 [FCA/
PRA] G The published Memorandum of Understanding between the *FCA* and the *PRA* describes their regulatory responsibilities.

2.2.25 [FCA/
PRA] G Examples of *rules* being interpreted as cut-back by *GEN 2.2.23R* include:

(1) *BIPRU 4* imposes capital requirements that, for a *PRA-authorised person* such as a *bank*, are the exclusive responsibility of the *PRA*; accordingly this section is not applied by the *FCA* to a *PRA-*

authorised person:

- (2) SYSC 6.1.1R requires a firm to maintain adequate policies and procedures to ensure compliance with its obligations under the regulatory system; SYSC 6.1.1R should be interpreted:
- (a) as applied by the FCA in respect of a PRA-*authorised person's* compliance with regulatory obligations that are the responsibility of the FCA (for example, in respect of a bank maintaining policies and procedures to ensure compliance with banking conduct requirements in BCOBS); and,
- (b) as applied by the PRA in respect of a PRA-*authorised person's* compliance with those regulatory obligations that are the responsibility of the PRA (for example, in respect of a bank maintaining policies and procedures to ensure compliance with financial resources requirements in BIPRU).
- (3) COMP 5.2.1R sets out types of *protected claims* to be covered by the FSCS. The powers of FCA and PRA to make this type of rule are set out in the order made under section 213(1A) of the Act. The rule must be read as applying only to the extent of those powers. For example, the PRA has no power to make COMP 5.2.1R(3) creating *protected claims* in connection with *protected investment business*, and the FCA has no power to make COMP 5.2.1R(1) as creating *protected claims* for a *protected deposit*. As such, those provisions are to be interpreted as not applied by the PRA and FCA, respectively.

2 Annex Designated investment exchanges
1G
[FCA]

...	
Criteria for inclusion in the list of designated investment exchanges	
3.	Before adding an investment exchange to the list of <i>designated investment exchanges</i> in the <i>Handbook</i> , the FSA FCA will comply with all the requirements imposed by the <i>Act</i> in relation to the exercise of its rule-making powers. This will include consulting on the proposed amendment to the list.
4.	In considering compatibility of the proposed addition with the regulatory objectives <i>statutory objectives</i> , the FSA FCA will determine whether the investment exchange provides an appropriate degree of protection for <i>consumers</i> having regard in particular to:

	...
Applications to be added to the list of designated investment exchanges	
6.	An application to be added to the list should be in writing and delivered to the FSA <u>FCA</u> by:
(1)	post to: The Financial Services Authority <u>The Financial Conduct Authority</u> 5 The North Colonnade Canary Wharf London E14 5HS; or
(2)	leaving the application at that address.
7.
8	An application will not be considered by the FSA <u>FCA</u> until the application fee has been paid. See <i>FEES</i> 3.2

...

GEN 2 [deleted]
Annex
2

Statutory status disclosure

4 Statutory status disclosure

4.1 Application

Who? What?

4.1.1 R This chapter applies to every *firm* and with respect to every *regulated activity*,
[FCA/
PRA] except that:

...

(5) only *GEN* 4.5 (Statements about authorisation and regulation by the ~~FSA~~ appropriate regulator) applies in relation to *MiFID* or *equivalent*

third country business and only where that *MiFID or equivalent third country business* is not business falling within paragraph 2 (Transactions between an MTF operator and its users), 3 (Transactions concluded on an MTF) or 4 (Transactions concluded on a regulated market) of Part 1 of COBS 1 Annex 1.

Where?

4.1.2 R ...
[FCA/
PRA]

4.1.3 R ...
[FCA/
PRA]

4.1.4 R *GEN 4.5* (Statements about authorisation and regulation by the *FSA appropriate regulator*) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, provided that, in the case of the *MiFID business* of an *EEA MiFID investment firm* or the activities of an *EEA UCITS management company*, it only applies to business conducted within the territory of the *United Kingdom*.
[FCA/
PRA]

4.2 Purpose

4.2.1 G ~~The purpose of this chapter is to build upon *Principle 7* (Communications with clients), which requires a *firm* to pay due regard to the information needs of its *clients*. This chapter requires the provision of appropriate minimum information about the identity of the regulator that authorised a *firm*. It also governs the way in which a *firm* may describe its regulation by the *FSA appropriate regulator*. This assists in the achievement of the *regulatory objectives* of consumer protection, market confidence and financial stability.~~
[FCA/
PRA]

4.2.1A G [deleted]

4.2.1B G This chapter builds upon *Principle 7* (Communications with clients), which requires a *firm* to pay due regard to the information needs of its *clients*. This assists in the achievement of the *statutory objectives* including the *FCA's* strategic objective of ensuring that relevant markets function well and the consumer protection and integrity objectives.
[FCA]

4.2.1C G This chapter assists in the achievement the *PRA's* general objective to ensure the safety and soundness of *firms*.
[PRA]

...

4.3 Letter disclosure

Disclosure in letters to retail clients

- 4.3.1 R A *firm* must take reasonable care to ensure that every letter (or electronic equivalent) which it or its *employees* send to a *retail client*, with a view to or in connection with the *firm* carrying on a *regulated activity*, includes the disclosure in *GEN 4 Annex 1R (firms that are not PRA-authorized persons)* or *GEN 4 Annex 1AR (PRA-authorized persons)* as applicable.
- [FCA/
PRA]
- 4.3.1A G Where a letter covers both activities to which this section applies and activities to which this section does not apply, the *firm* should comply with the *rules* in this chapter in relation to the business to which it applies. ~~An example would be where a letter covers business for which the FSA is the competent authority under the Insurance Mediation Directive and under MiFID.~~
- [FCA/
PRA]
- 4.3.1B G An example for GEN 4.3.1AG would be where a letter covers business for which the FCA is the competent authority under the Insurance Mediation Directive and under MiFID.
- [FCA]
- 4.3.2 G ~~For a UK domestic firm, the required disclosure in GEN 4 Annex 1R is "Authorised and regulated by the Financial Services Authority". [deleted]~~
- 4.3.2A G For a UK domestic firm that is not a PRA-authorized person, the required disclosure in GEN 4 Annex 1R is "Authorised and regulated by the Financial Conduct Authority".
- [FCA]
- 4.3.2B G For a UK domestic firm that is a PRA-authorized person, the required disclosure in GEN 4 Annex 1AR is "Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and Prudential Regulation Authority".
- [FCA/
PRA]

...

4.5 **Statements about authorisation and regulation by the FSA appropriate regulator**

Application

...

- 4.5.2 G ~~GEN 4.5.1R(1) does not apply to a *firm* when communicating with an *eligible counterparty*. However, misleading statements by a *firm* in such a communication may involve a breach of *Principle 7 (Communications with clients)* or section 397 (Misleading statements and practices) of the *Act*, as well as giving rise to private law actions for misrepresentation.~~
- [FCA/
PRA]
- 4.5.2A G However, misleading statements by a *firm* when communicated with an *eligible counterparty* may involve a breach of *Principle 7 (Communications with clients)* or section 397 (Misleading statements and practices) of the *Act*, as well
- [FCA]

as giving rise to private law actions for misrepresentation.

The duty

- 4.5.3 R A *firm* must not indicate or imply that it is authorised by the ~~FS~~SA FCA in
[FCA] respect of business for which it is not so authorised.
- 4.5.3A R A *firm* must not indicate or imply that it is authorised by the *PRA* in respect of
[FCA/PRA] business for which it is not so authorised.
- 4.5.4 R A *firm* must not indicate or imply that it is regulated or otherwise supervised by
[FCA] the ~~FS~~SA FCA in respect of business for which it is not regulated by the ~~FS~~SA
FCA.
- 4.5.4A R A *firm* must not indicate or imply that it is regulated or otherwise supervised by
[FCA/PRA] the *PRA* in respect of business for which it is not regulated by the *PRA*.
- ...
- 4.5.6 G (1) Neither an incoming *EEA firm* nor an *incoming Treaty firm* is authorised
[FCA/PRA] by the ~~FS~~SA FCA or PRA when acting as such.
- (2) It is likely to be misleading for a *firm* that is not authorised by the ~~FS~~SA
FCA or PRA to state or imply that it is so authorised. It is also likely to be
misleading for a *firm* to state or imply that a *client* will have recourse to
the *Financial Ombudsman Service* or the *FSCS* where this is not the case.
- (3) ~~As well as potentially breaching the requirements in this section,~~
~~misleading statements by a *firm* may involve a breach of *Principle 7*~~
~~(Communications with clients) or section 397 (Misleading statements and~~
~~practices) of the *Act*, as well as giving rise to private law actions for~~
~~misrepresentation. [deleted]~~
- 4.5.6A G As well as potentially breaching the requirements in this section, misleading
[FCA] statements by a *firm* may involve a breach of *Principle 7* (Communications
with clients) or section 397 (Misleading statements and practices) of the *Act*, as
well as giving rise to private law actions for misrepresentation.

4 Annex Statutory status disclosure (*firms that are not PRA-authorised persons*)

1R

[FCA]

This rule applies to *firms* that are not *PRA-authorised persons*:

Type of firm	Required disclosure (Note 5)
--------------	------------------------------

(1)	<i>UK domestic firm; or overseas firm (which is not an incoming firm)</i>	"Authorised and regulated by the Financial Services Authority <u>Financial Conduct Authority</u>" (Note 1)
(2)	<i>Incoming firm without a top-up permission</i>	(a) "Authorised by [name of <i>Home State regulator</i>] or (b) "Authorised by [name of <i>Home State regulator</i>] and subject to limited regulation by the Financial Services Authority <u>Financial Conduct Authority</u> . Details about the extent of our regulation by the Financial Services Authority <u>Financial Conduct Authority</u> are available from us on request" (Notes 1, 2, 2a and 3)
(3)	<i>Incoming firm with a top-up permission</i>	"Authorised by [name of <i>Home State regulator</i>] and authorised and subject to limited regulation by the Financial Services Authority <u>Financial Conduct Authority</u>. Details about the extent of our authorisation and regulation by the Financial Services Authority <u>Financial Conduct Authority</u> are available from us on request" (Notes 1, 2 and 3)
(4)	<i>Appointed representative of a firm</i>	"[Name of <i>appointed representative</i>] is an appointed representative of [name of <i>firm</i>] which is [then continue with the required disclosure of the <i>firm</i>]" (Note 4)
(5)	<i>Society of Lloyd's</i>	"Authorised under the Financial Services and Markets Act 2000"

Note 1 = A firm must use the formulation "~~Financial Services Authority~~ Financial Conduct Authority" and not the abbreviated formulation "~~FSA~~ FCA".

Note 2 = An *incoming firm* is free to translate the name of its *Home State regulator* into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.

Note 2a = An *incoming firm* without a *top-up permission* may make either disclosure (a) or disclosure (b) unless it otherwise indicates or implies to the *customer* that it is regulated or supervised by the ~~FSA~~ FCA in which case it must make disclosure (b).

Note 3 = If a *firm* offers to make details about the extent of its authorisation or regulation by the ~~FSA~~ FCA available on request and a *customer* requests such details, it must provide those details in a way that is clear, fair and not misleading.

Note 4 = If the appointed representative has more than one principal, the disclosure must relate to the principal or principals responsible for the regulated activity or activities concerned. The required disclosure of the firm is that which would apply were the firm to make the disclosure under the rules applicable to the firm.

Note 5 = Any firm listed in this table is permitted to add words to the relevant required disclosure statement but only if the firm has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, be fair, clear and not misleading and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received. For example, an authorised professional firm may wish to make it clear that it is also regulated by its professional body.

Insert the following new Annex after GEN 4 Annex 1R. The text is all new and is not underlined.

4 Annex Statutory status disclosure (PRA-*authorised persons*)

1AR

[FCA/
PRA]

This rule applies to firms that are *PRA-*authorised persons**:

	Type of firm	Required disclosure (Note 5)
(1)	<i>UK domestic firm</i>	"Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority" (Note 1)
(2)	<i>overseas firm (which is not an incoming firm)</i>	"[Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm's registered office (or, if it has no registered office, its head office)]]. Authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details about the extent of our regulation by the Prudential Regulation Authority are available from us

		on request." (Notes 1, 2, 3 and 3a)
(3)	<i>Incoming firm without a top-up permission</i>	(a) "Authorised by [name of <i>Home State regulator</i>]" or (b) "Authorised by [name of <i>Home State regulator</i>] and subject to limited regulation by the Financial Conduct Authority and Prudential Regulation Authority. Details about the extent of our regulation by the Financial Conduct Authority and Prudential Regulation Authority are available from us on request" (Notes 1, 2, 2a and 3)
(4)	<i>Incoming firm with a top-up permission</i>	"Authorised by [name of <i>Home State regulator</i>] and the Prudential Regulation Authority and subject to limited regulation by the Financial Conduct Authority and Prudential Regulation Authority. Details about the extent of our authorisation and regulation by the Prudential Regulation Authority, and regulation by the Financial Conduct Authority are available from us on request" (Notes 1, 2 and 3)
(4)	<i>Appointed representative of a firm</i>	"[Name of <i>appointed representative</i>] is an appointed representative of [name of <i>firm</i>] which is [then continue with the required disclosure of the <i>firm</i>]" (Note 4)
(5)	<i>Society of Lloyd's</i>	"Authorised under the Financial Services and Markets Act 2000"
<p>Note 1 = A firm must use the formulation "Financial Conduct Authority" or "Prudential Regulation Authority" and not the abbreviated formulation "FCA" or "PRA" respectively.</p> <p>Note 2 = An incoming firm or overseas firm is free to translate the name of its Home State regulator or overseas regulator into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.</p> <p>Note 2a = An incoming firm without a top-up permission may make either disclosure (a) or disclosure (b) unless it otherwise indicates or implies to the</p>		

customer that it is regulated or supervised by the FCA or PRA, in which case it must make disclosure (b).

Note 3 = If a *firm* offers to make details about the extent of its authorisation by the PRA or regulation by the FCA or PRA available on request and a *customer* requests such details, it must provide those details in a way that is clear, fair and not misleading.

Note 3a = An *overseas firm* that is not an *incoming firm* is only required to disclose its authorisation and/or regulated by an *overseas regulator* if it is so authorised and/or regulated.

Note 4 = If the *appointed representative* has more than one *principal*, the disclosure must relate to the *principal* or *principals* responsible for the *regulated activity* or activities concerned. The required disclosure of the *firm* is that which would apply were the firm to make the disclosure under the *rules* applicable to the *firm*.

Note 5 = Any *firm* listed in this table is permitted to add words to the relevant required disclosure statement but only if the *firm* has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, be fair, clear and not misleading and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received.

5 The FSA Regulators' logos and the keyfacts logo

5.1 Application and purpose

Application

5.1.1 G This chapter contains:
[FCA]

- (1) *guidance for firms, authorised payment institutions and authorised electronic money institutions and their appointed representatives, agents or tied agents on the circumstances in which the FSA FCA permits them to reproduce the FSA and FCA logos;*
- (2) *rules on the use by firms of the keyfacts logo.*

Purpose

5.1.2 G The FSA logo is a registered UK service mark, with number 2150560. The FCA logo is a registered UK service mark, with number [to be inserted]. The keyfacts logo is a registered Community trade mark, with the number 386688. ~~Both~~ All are the property of the ~~FSA FCA~~. They are also subject to copyright and may be used or reproduced with permission of the ~~FSA FCA~~ only. If the ~~FSA, FCA,~~ or keyfacts logos are reproduced or otherwise used by any person

without such permission the *FSA FCA* may seek to enforce its rights over its property through the Courts.

5.1.3 G *GEN 5 Annex 1G* is a general licence, which sets out the circumstances in
[FCA] which the *FSA FCA* permits a *person* to whom this chapter applies to reproduce the FSA and keyfacts logos. Such a *person* need not apply for an individual licence if it uses or reproduces the logos in accordance with the general licence.

5.1.3A G No general license is granted by the *FCA* in respect of the FCA logo.
[FCA]

5.1.4 G The *FSA FCA* has no policy to allow use of the logos FSA or keyfacts logos by
[FCA] a *person* to whom this chapter applies other than as set out in *GEN 5 Annex 1G*. If, however, such a *person* wishes to use or reproduce either of the logos other than in accordance with the general licence, it may apply to the *FSA FCA* for an individual licence, giving full reasons why it considers the *FSA FCA* should grant the licence.

...

The FSA logo

5.1.8 R A *firm* must not use the FSA logo (and must take all reasonable steps to ensure
[FCA] that its *representatives* do not use the FSA logo) in any communication with a *client* other than in accordance with the general licence in *GEN 5 Annex 1G* or any individual licence granted by the *FSA FCA* to the *firm* or its *representatives*.

5.1.9 G The general license in *GEN 5 Annex 1G* to use the FSA logo will continue till
[FCA] [insert date 6 months after *cutover*] whereupon the general license is revoked by *GEN 5 Annex 1G, 7.1.*

The FCA logo

5.1.10 R A *firm* must not use the FCA logo (and must take all reasonable steps to ensure
[FCA] that its *representatives* do not use the FCA logo) in any communication with a *client* other than in accordance with any individual licence granted by the *FCA* to the *firm* or its *representatives*.

5 Annex
1G
[FCA]

Licence for use of the FSA and keyfacts logos

Application	
1.1	The <i>FSA FCA</i> grants this licence to <i>firms, authorised payment institutions, authorised electronic money institutions, appointed representatives,</i>

	<i>agents and tied agents.</i>
The FSA and keyfacts logos	
...	
2.4	Copyright subsists in the FSA and keyfacts logos.
2.5	Copies of the FSA and keyfacts logos that are capable of being reproduced for printing can be found on the <i>FSA's FCA's</i> website at [<u>web address to be inserted</u>] <i>http://www.fsa.gov.uk/Pages/Library/Other_publications/Logos_and_Photos/index.shtml</i>
Permission to use the FSA logo	
3.1	A UK domestic firm, its appointed representatives and tied agents, an authorised payment institution and its agents and an authorised electronic money institution and its agents are permitted to use the FSA logo:
...	
(2)	if required to do so by the <i>FSA FCA</i> .
3.1 A	[deleted]
3.2	The disclosure required by <i>GEN 4.3.1 R</i> (Disclosure in letters to <i>retail clients</i>) as continued in <i>GEN TP 1.3(3).13</i> is an example of a statement within paragraph 3.1 above.
...	
Further conditions on the use of the FSA and keyfacts logos	
5.1	The permissions in paragraphs 3.1 and 3A.1 are also subject to the conditions that any material, whether produced on paper or electronically, on which the FSA or keyfacts logos are displayed does not:
(1)	in any way imply that the <i>FSA FCA</i> is endorsing the licensee or its products, services or communications (see also <i>GEN 1.2.2 R(1)</i>); or
(2)	misrepresent the licensee's relationship with the <i>FSA FCA</i> or present false information about the <i>FSA FCA</i> ; or
...	

6.1	[deleted]
Commencement and duration	
7.1	This licence comes into effect on 1 May 2003 except that in relation to the keyfacts logo it comes into effect on 6 November 2006. <u>In relation to the FSA logo, this license ceases to have effect and is revoked on [insert date 6 months after <i>cutover</i>].</u>
7.2	The FSA <i>FCA</i> may alter or revoke this licence at any time, by giving at least two months' notice on the FSA's <i>FCA's</i> website.
Interpretation	
8.1	This licence is to be interpreted in accordance with chapter 2 of the General provisions (Interpreting the Handbook) of the <i>Handbook</i> FSA's Handbook of Rules and Guidance . In particular, expressions in italics are defined in the Glossary.
...	

Appendix 2

Designation of changes to GEN

Appendix 2: Designation of Changes to GEN

Handbook Provision	Designation
...	...
GEN 2.2.3	PRA and FCA
GEN 2.2.4	PRA and FCA
...	...
GEN 2.2.13A	PRA and FCA
GEN 2.2.14	PRA and FCA
GEN 2.2.15	PRA and FCA
GEN 2.2.15A	FCA
...	...
GEN 2.2.17	PRA and FCA
...	...
GEN 2.2.23	PRA and FCA
GEN 2.2.24	PRA and FCA
GEN 2.2.25	PRA and FCA
GEN 2 Annex 1	FCA
...	...

Handbook Provision	Designation
GEN 4.1.1	PRA and FCA
...	...
GEN 4.1.4	PRA and FCA
GEN 4.2.1	PRA and FCA

...	...
GEN 4.2.1B	FCA
GEN 4.2.1C	PRA
...	...
GEN 4.3.1	PRA and FCA
GEN 4.3.1A	PRA and FCA
GEN 4.3.1B	FCA
...	...
GEN 4.3.2A	FCA
GEN 4.3.2B	PRA and FCA
...	...
GEN 4.5.2	PRA and FCA
GEN 4.5.2A	FCA
GEN 4.5.3	FCA
GEN 4.5.3A	PRA and FCA
GEN 4.5.4	FCA
GEN 4.5.4A	PRA and FCA
...	...
GEN 4.5.6	PRA and FCA
GEN 4.5.6A	FCA
GEN 4 Annex 1	FCA
GEN 4 Annex 1A	PRA and FCA

Handbook Provision	Designation
GEN 5.1.1	FCA
GEN 5.1.2	FCA

GEN 5.1.3	FCA
GEN 5.1.3A	FCA
GEN 5.1.4	FCA
...	...
GEN 5.1.8	FCA
GEN 5.1.9	FCA
GEN 5.1.10	FCA
GEN 5 Annex 1	FCA

Appendix 3

Changes to Chapter 5 of the Supervision manual (SUP 5)

SKILLED PERSONS LEGAL CUTOVER INSTRUMENT 2012

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct 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 137A (The FCA’s general rules);
 - (2) section 137R (General supplementary powers);
 - (3) section 138C (Evidential provisions);
 - (4) section 139A (Power of the FCA to give guidance);
 - (5) section 166(9) (Reports by skilled persons);
 - (6) section 166A(9) (Appointment of skilled person to collect and update information);
 - (7) section 213 (The compensation scheme);
 - (8) section 214 (General); and
 - (9) section 226 (Compulsory jurisdiction).
- B. The rule-making powers referred to above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Powers exercised by the Prudential Regulation Authority

- C. The Prudential Regulation 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 137E (The PRA’s general rules);
 - (2) section 137R (General supplementary powers);
 - (3) section 138C (Evidential provisions);
 - (4) section 166(9) (Reports by skilled persons);
 - (5) section 166A(9) (Appointment of skilled person to collect and update information);
 - (6) section 213 (The compensation scheme);
 - (7) section 214 (General); and
 - (8) section 226 (Compulsory jurisdiction).
- D. The rule-making powers referred to above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- E. This instrument comes into force on *[date]*.

Amendments to the Handbook

- F. The modules of the FCA and PRA Handbooks of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Supervision manual (SUP)	Annex C

Citation

G. This instrument may be cited as the Skilled Persons Legal Cutover Instrument 2012.

By order of the Board of the Financial Conduct Authority
[*date*]

By order of the Board of the Prudential Regulation Authority
[*date*]

Annex A

Amendments to Glossary

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

- skilled person*
[FCA/PRA] a *person* appointed to make a report required by section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the *Act* (~~Reports by skilled persons~~) for provision to the *FSA appropriate regulator* and who must be a person:
- (a) ~~nominated, or~~ approved or appointed by the *FSA appropriate regulator*; and
 - (b) appearing to the *FSA appropriate regulator* to have the skills necessary to make a report on the matter concerned.

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text.

3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
<u>(zp) A person in respect of which the appropriate regulator has given notice of its intention to itself appoint a skilled person to provide it with a report pursuant to section 166(3)(b) of the Act and SUP 5.2.</u>	<u>Any amount invoiced to the appropriate regulator by a skilled person in relation to any work carried out by that skilled person in connection with its appointment by the appropriate regulator pursuant to section 166(3)(b) of the Act.</u>	<u>Within 30 days of the date of the invoice.</u>
<u>(zq) A person in respect of which the appropriate regulator has given notice of its intention to itself appoint a skilled person to collect or update information pursuant to section 166A(2)(b) of the Act.</u>	<u>Any amount invoiced to the appropriate regulator by a skilled person in relation to any work carried out by that skilled person in connection with its appointment by the appropriate regulator pursuant to section 166A(2)(b) of the Act.</u>	<u>Within 30 days of the date of the invoice.</u>
...		

Annex C

Amendments to the Supervision manual (SUP)

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

5 Reports by skilled persons

5.1 Application and purpose

Application

5.1.1 R ...

5.1.1A [FCA] R In respect of the FCA's power in section 166 of the Act (Reports by skilled persons), reference to a firm in SUP 5.5.1R, SUP 5.5.5R and SUP 5.5.9R includes a recognised investment exchange.

5.1.1B [FCA] G In respect of the FCA's power in section 166 of the Act (Reports by skilled persons), the guidance in this chapter applies to a recognised investment exchange in the same way as it applies to a firm.

5.1.2 [FCA/ PRA] G This chapter (other than the *rules*, and *guidance on rules*, in SUP 5.5 (Duties of firms)) is also relevant to certain unauthorised *persons* within the scope of section 166 of the *Act* (Reports by skilled persons) (see SUP 5.2.1G).

Purpose

5.1.3 [FCA/ PRA] G The purpose of this chapter is to give *guidance* on the *FSA's appropriate regulator's* use of the power in section 166 (Reports by skilled persons) and section 166A (Appointment of skilled person to collect and update information) of the *Act* (~~Reports by skilled persons~~). The purpose is also to make *rules* requiring a *firm* ~~to include certain provisions in its contract with a skilled person and~~ to give assistance to a *skilled person* ~~and, where a firm is required to appoint a skilled person, to include certain provisions in its contract with a skilled person~~. These *rules* are designed to ensure that the *FSA appropriate regulator* receives certain information from a *skilled person* and that a *skilled person* receives assistance from a *firm*.

5.2 The FSA's appropriate regulator's power

Who may be required to provide a report?

5.2.1 [FCA/ PRA] G Under section 166 of the *Act* (Reports by skilled persons), the *FSA appropriate regulator* may, by giving a written notice, itself appoint a skilled person to provide it with a report, or require any of the following *persons* to provide it with a report by a *skilled person*:

...

5.2.2 G Under section 166A of the Act (Appointment of skilled person to collect and update information), the appropriate regulator may require a firm to appoint, or itself appoint, a skilled person to collect or update information.
[FCA/
PRA]

5.3 Policy on the use of skilled persons

5.3.1 G The appointment of a *skilled person* to produce a report under section 166 of the Act (Reports by skilled persons) is one of the *FSA's appropriate regulator's* regulatory tools. The tool may be used:
[FCA/
PRA]

...

~~SUP 5 Annex 1 gives examples of circumstances in which the FSA may use the skilled persons tool.~~

5.3.1A G SUP 5 Annex 1 gives examples of circumstances in which the FCA may use the skilled persons tool.
[FCA]

5.3.2 G The decision by the *appropriate regulator* to require a report by a *skilled person* under section 166 of the Act (Reports by skilled persons) will normally be prompted by a specific requirement for information, analysis of information, assessment of a situation, expert advice or recommendations or by a decision to seek assurance in relation to a regulatory return. It may be part of the risk mitigation programme applicable to a *firm*, or the result of an event or development relating or relevant to a *firm*, prompted by a need for verification of information provided to the *FSA appropriate regulator* or part of the *FSA's appropriate regulator's* regular monitoring of a *firm*.
[FCA/
PRA]

5.3.2A G The decision by the appropriate regulator to require the collection or updating of information by a skilled person under section 166A of the Act (Appointment of skilled person to collect and update information) will be prompted where the appropriate regulator considers there has been a breach of a requirement by a firm to collect, and keep up to date, information of a description specified in the appropriate regulator's rules.
[FCA/
PRA]

5.3.3 G When making the decision to require a report by a *skilled person* under section 166 (Reports by skilled persons) or the collection or updating of information by a *skilled person* under section 166A (Appointment of skilled person to collect and update information) of the Act, the *FSA appropriate regulator* will have regard, on a case-by-case basis, to all relevant factors. Those are likely to include:
[FCA/
PRA]

...

(4) the objectives of the *FSA's appropriate regulator's* enquiries;

(5) cost considerations; and

- (6) considerations relating to ~~FSA~~ the appropriate regulator's resources.

SUP 5.3.4G to SUP 5.3.10G give further guidance on these listed factors.

Circumstances relating to the firm

5.3.4
[FCA/
PRA]

- G The ~~FSA~~ appropriate regulator will have regard to circumstances relating to the *firm*, for example:

...

- (3) quality of a *firm's* systems and records: whether the ~~FSA~~ appropriate regulator has confidence that the *firm* has the ability to provide the required information;
- (4) objectivity: whether the ~~FSA~~ appropriate regulator has confidence in the *firm's* willingness and ability to deliver an objective report;
- (5) conflicts of interest: whether the subject matter of the enquiries or the report involves actual or potential misconduct and it would be inappropriate for the ~~FSA~~ appropriate regulator to rely on the *firm* itself to enquire into the matter; and

...

Alternative tools available, including other statutory powers

5.3.5
[FCA/
PRA]

- G The ~~FSA~~ appropriate regulator will have regard to alternative tools that may be available, including for example:

- (1) obtaining what is required without using specific statutory powers (for example, by a visit by ~~FSA~~ staff of the appropriate regulator or a request for information on an informal basis);
- (2) requiring information from *firms* and others, including authorising an agent to require information, under section 165 of the *Act* (~~Authority's~~ Power to require information);
- (3) appointing investigators to carry out general investigations under section 167 of the *Act* (~~Appointment of persons to carry out general investigations~~ investigator in general cases) (see *EG 3* for the ~~FSA's~~ appropriate regulator's policy on the use of this power); and
- (4) appointing investigators to carry out investigations in particular cases under section 168 of the *Act* (~~Appointment of persons to carry out investigations in particular cases~~ investigator in specific cases) (see *EG 3* for the ~~FSA's~~ appropriate regulator's policy on the use of this power).

Legal and procedural considerations

5.3.6
[FCA/
PRA]

- G The *FSA appropriate regulator* will have regard to legal and procedural considerations including:
- (1) statutory powers: whether one of the other available statutory powers is more appropriate for the purpose than the power in section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the *Act* (~~Reports by skilled persons~~);
 - (2) subsequent proceedings: whether it is desirable to obtain an authoritative and independent report for use in any subsequent proceedings; and
 - (3) application of the *Handbook rules*: whether it is important that the relevant *rules* in the *Handbook* should apply, for example SUP 5.5.1R which obliges the *firm* to require and permit the ~~skilled person~~ *skilled person* to report specified matters to the *FSA appropriate regulator*.

The objectives of the *FSA's appropriate regulator's* enquiries5.3.7
[FCA/
PRA]

- G The *FSA appropriate regulator* will have regard to the objectives of its enquiries, and the relative effectiveness of its available powers to achieve those objectives. For example:
- (1) historic information or evidence: if the objectives are limited to gathering historic information, or evidence for determining whether enforcement action may be appropriate, the *FSA's appropriate regulator's* information gathering and investigation powers under sections 165 (~~Authority's Power to require information~~), 167 (Appointment of persons to carry out general investigations investigator in general cases) and 168 (Appointment of persons to carry out investigations in particular cases investigator in specific cases) of the *Act* are likely to be more appropriate than the ~~power~~ power in section 166 ~~power~~ (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the *Act*; and
 - (2) expert analysis or recommendations: if the objectives include obtaining expert analysis or recommendations (or both) for diagnostic, monitoring, preventative or remedial purposes, the section 166 power (Reports by skilled persons) may be an appropriate power to use, instead of, or in conjunction with, the *FSA's appropriate regulator's* other available powers.

Cost considerations

5.3.8

- G In accordance with its general policy the *FSA appropriate regulator* will

[FCA/
PRA]

have regard to the question of cost, which is particularly pertinent in relation to *skilled persons* because:

- (1) if the *FSA appropriate regulator* uses the section 166 power (Reports by skilled persons) or the section 166A power (Appointment of skilled person to collect and update information), either the firm will appoint, and will have to pay for the services of, the skilled person, or the appropriate regulator will appoint, and will require under FEES 3.2.7(zp) or FEES 3.2.7(zq) that the relevant firm pays for the services of, the skilled person;
- (2) if the *FSA appropriate regulator* uses its other information gathering and investigation powers, it will either authorise or appoint its own staff to undertake the information gathering or investigation (or both), or it will pay for the services of external competent persons to do so; in either case the costs will be recovered under the *FSA's appropriate regulator's* general fee scheme.

5.3.9
[FCA/
PRA]

- G In having regard to the cost implications of using the section 166 power (Reports by skilled persons) or the section 166A power (Appointment of skilled person to collect and update information) alternative options (such as visits) or other powers, the *FSA appropriate regulator* will take into account relevant factors, including:

...

- (4) whether the *firm* appears to have breached requirements or standards under the *regulatory system* or otherwise put the interests of consumers at risk, and it is unable or unwilling to review and remedy the matters of concern, or the *FSA appropriate regulator* considers that it cannot rely on the *firm* to do so; and

...

...

Considerations relating to *FSA the appropriate regulator's* resources

5.3.10
[FCA/
PRA]

- G The *FSA appropriate regulator* will have regard to *FSA appropriate regulator*-related considerations including:

- (1) *FSA appropriate regulator* expertise: whether the *FSA appropriate regulator* has the necessary expertise; and
- (2) *FSA appropriate regulator* resources: whether the resources required to produce a report or to make enquiries or to appoint a skilled person itself are available within the *FSA appropriate regulator*, or whether the exercise will be the best use of the *FSA's appropriate regulator's* resources at the time.

5.4 Appointment and reporting process

Scope of report

- 5.4.1 [FCA/PRA] G Where the *appropriate regulator* requires a report by a *skilled person* under section 166 of the *Act* (Reports by skilled persons), ~~The the *FSA appropriate regulator*~~ will send a notice in writing requiring the *person* in SUP 5.2.1G to provide a report by a *skilled person*, or notifying the *person* in SUP 5.2.1G in writing of the *appropriate regulator's* appointment of a *skilled person* to provide a report, on any matter if it is reasonably required in connection with the exercise of its functions conferred by or under the *Act*. The *FSA appropriate regulator* may require the report to be in whatever form it specifies in the notice (~~SUP 5 Annex 2 summarises the appointment and reporting processes~~).
- 5.4.1A [FCA/PRA] G Where the *appropriate regulator* requires the updating or collection of information by a *skilled person* under section 166A of the *Act* (Appointment of skilled person to collect and update information), the *appropriate regulator* will send a notice in writing requiring the *firm* to appoint a *skilled person*, or notifying the *firm* of the *appropriate regulator's* appointment of a *skilled person*, to collect or update the relevant information.
- 5.4.2 [FCA/PRA] G As part of the decision making process the *FSA appropriate regulator* will normally contact the *person* in SUP 5.2.1G or in SUP 5.2.2G to discuss its needs before finalising its decision to require a report or the updating or collection of information by a *skilled person*. This will provide an opportunity for discussion about the appointment, whether an alternative means of obtaining the information would be better, what the scope of a report should be, who should be appointed, who should appoint, and the likely cost.
- 5.4.3 [FCA/PRA] G The *FSA appropriate regulator* will give written notification to the *person* in SUP 5.2.1G or SUP 5.2.2G of the purpose of the report or collection or updating of information, its scope, the timetable for completion and any other relevant matters. The *FSA appropriate regulator* will state the matters which the report is to contain, or the information which is to be collected or updated, as well as any requirements as to the report's format. For example, a report on controls may be required to address key risks, key controls and the control environment. The *FSA appropriate regulator* attaches importance to there being a timetable for each report and to the *skilled person*, with the cooperation of the *person* in SUP 5.2.1G or the *firm* in SUP 5.2.2G, as relevant, keeping to that timetable.
- 5.4.4 [FCA/PRA] G The written notification in SUP 5.4.3G may be preceded or followed by a discussion of the *FSA's appropriate regulator's* requirements and the reasons for them. This may involve the *FSA appropriate regulator*, the *person* in SUP 5.2.1G or in SUP 5.2.2G and the *person* who has been, or is expected to be, appointed as the *skilled person*. The *FSA appropriate regulator* recognises that there will normally be value in holding discussions involving the *skilled person* at this stage. These discussions may

include others if appropriate.

- 5.4.5 [FCA/PRA] G The *FSA appropriate regulator* will wish to conduct the discussion with the *firm*, its *skilled person* and any others within a timescale appropriate to the circumstances of the case.

Appointment process

- 5.4.6 [FCA/PRA] G ~~The~~ Where the *skilled person* is appointed by the *person* in SUP 5.2.1G or SUP 5.2.2G, ~~The~~ the *FSA appropriate regulator* will normally seek to agree in advance with the *person* in SUP 5.2.1G or SUP 5.2.2G the *skilled person* who will make the report or collect or update the relevant information. The *Act* requires that ~~the~~ such *skilled person* be nominated or approved by the *FSA appropriate regulator*:

- (1) if the *FSA appropriate regulator* decides to nominate the *skilled person* who is to make the report or collect or update the information, it will notify the *person* in SUP 5.2.1G or SUP 5.2.2G accordingly; and
- (2) alternatively, if the *FSA appropriate regulator* is content to approve a *skilled person* selected by the *person* in SUP 5.2.1 G or SUP 5.2.2 G, it will notify the latter *person* of that fact.

The *FSA appropriate regulator* may give the *person* in SUP 5.2.1G or SUP 5.2.2G a shortlist from which to choose.

- 5.4.7 [FCA/PRA] G A *skilled person* must appear to the *FSA appropriate regulator* to have the skills necessary to make a report on the matter concerned or collect or update the relevant information. A *skilled person* may be an accountant, lawyer, compliance consultant, *actuary* or *person* with relevant business, technical or technological skills.

- 5.4.8 [FCA/PRA] G When considering whether to nominate, ~~or~~ approve or appoint a *skilled person* to make a report or collect or update information, the *FSA appropriate regulator* will have regard to the circumstances of the case, including whether the proposed *skilled person* appears to have:
- (1) the skills necessary to make a report on the matter concerned or collect or update the relevant information;
 - (2) the ability to complete the report or collect or update the information within the time expected by the *FSA appropriate regulator*;
 - (3) any relevant specialised knowledge, for instance of the *person* in SUP 5.2.1G or SUP 5.2.2G, the type of business carried on by the *person* in SUP 5.2.1G or SUP 5.2.2G, or the matter to be reported on or information to be collected or updated;
 - (4) any professional difficulty or potential conflict of interest in reviewing the matters to be reported on or the information to be collected or updated, for instance because ~~the matters to be reported~~

~~on~~ it may involve questions reflecting on the quality or reliability of work previously carried out by the proposed *skilled person*; and

- (5) enough detachment, bearing in mind the closeness of an existing professional or commercial relationship, to be able to collect or update the information or to give an objective opinion on matters such as:
- (a) matters already reported on by the *skilled person* (for example, on the financial statements of the *person* in *SUP 5.2.1G* or in *SUP 5.2.2G* or in relation to their *systems and controls*);
 - (b) matters that are likely to be contentious and may result in disciplinary or other enforcement action against the *person* in *SUP 5.2.1G* or *SUP 5.2.2G*, its management, *shareholders* or *controllers*; or
 - (c) matters that the *skilled person* has been involved in, in another capacity (for example, when a *skilled person* has been involved in developing an information system it may not be appropriate for him to provide a subsequent opinion on the adequacy of the system).

5.4.9 [FCA/PRA] G In appropriate circumstances, it may be cost effective for the *FSA appropriate regulator* to nominate or approve the appointment of, or appoint itself, a *skilled person* who has previously acted for, or advised, the *person* in *SUP 5.2.1G* or *SUP 5.2.2G*. For example, the *FSA appropriate regulator* may nominate, or approve the appointment of, or appoint, the auditor of a *person* in *SUP 5.2.1G* or *SUP 5.2.2G* to prepare a report or collect or update the information taking into account, where relevant, the considerations set out in *SUP 5.4.7G*.

Reporting process

5.4.10 [FCA/PRA] G ~~Where the *skilled person* is appointed by the *person* in *SUP 5.2.1G* or *SUP 5.2.2G*, The the *FSA appropriate regulator* will normally require the *person* in *SUP 5.2.1G* to appoint a *skilled person* to be appointed to report to the *FSA appropriate regulator* through that *person*. In the normal course of events the *FSA appropriate regulator* expects that the *person* in *SUP 5.2.1G* or *SUP 5.2.2G* will be given the opportunity to provide written comments on the report or the collection of the relevant information prior to its submission to the *FSA appropriate regulator* (*SUP 5 Annex 2* summarises the reporting process).~~

5.4.10A [FCA/PRA] G Where the *skilled person* is to be appointed by the *appropriate regulator* itself, the *skilled person* will report directly to the *appropriate regulator*.

5.4.11 [FCA/PRA] G The *FSA appropriate regulator* may enter into a dialogue with the *skilled person*, and is ready to discuss matters relevant to the report or the

- PRA] collection or updating of the relevant information with him, during the preparation of the report or the collection or updating of the relevant information. Such discussions ~~will normally~~ may involve or be through the *person* in SUP 5.2.1G or SUP 5.2.2G.
- 5.4.12 [FCA/ PRA] G The *FSA appropriate regulator* will normally specify a time limit within which it expects the *skilled person* to deliver the report or collect or update the relevant information. Where the *skilled person* is appointed by the *person* in SUP 5.2.1G or SUP 5.2.2G, ~~The~~ the *skilled person* should, in complying with its contractual duty under SUP 5.5.1R, take reasonable steps to achieve delivery by that time. If the *skilled person* becomes aware that the report may not be delivered, or collection or updating of the relevant information may not be, on time, he should inform the *FSA appropriate regulator* and the *person* in SUP 5.2.1G or SUP 5.2.2G as soon as possible. Where the *skilled person* is appointed by the *person* in SUP 5.2.1G or SUP 5.2.2G, ~~If~~ if the *skilled person* becomes aware that there may be difficulties delivering the report or collecting or updating the relevant information within cost estimates, he will no doubt wish to advise the *firm*.
- 5.4.13 [FCA/ PRA] G The *FSA appropriate regulator* may meet with the *person* in SUP 5.2.1G or SUP 5.2.2G and the *skilled person* together to discuss the final report. The *FSA appropriate regulator* may also wish to discuss the final report with the *skilled person* present but without the *person* in SUP 5.2.1G or SUP 5.2.2G.

5.5 Duties of firms

Contract with the skilled person

- 5.5.1 [FCA/ PRA] R When a *firm* appoints a ~~skilled person~~ *skilled person* to provide a report under section 166 (Reports by skilled persons) or collect or update information under section 166A (Appointment of skilled person to collect and update information) of the *Act* (~~Reports by skilled persons~~), the *firm* must, in a contract with the *skilled person*:
- (1) require and permit the *skilled person* during and after the course of his appointment:
 - (a) to cooperate with the *FSA appropriate regulator* in the discharge of its functions under the *Act* in relation to the *firm*; and
 - (b) to communicate to the *FSA appropriate regulator* information on, or his opinion on, matters of which he has, or had, become aware in his capacity as *skilled person* reporting on the *firm* in the following circumstances:
 - (i) the *skilled person* reasonably believes that, as regards the *firm* concerned (A) there is or has been, or may

be or may have been, a contravention of any relevant *requirement* that applies to the *firm* concerned; and (B) that the contravention may be of material significance to the *FSA appropriate regulator* in determining whether to exercise, in relation to the *firm* concerned, any functions conferred on the *FSA appropriate regulator* by or under any provision of the *Act* other than Part VI (Official Listing); or

- (ii) the *skilled person* reasonably believes that the information on, or his opinion on, those matters may be of material significance to the *FSA appropriate regulator* in determining whether the *firm* concerned satisfies and will continue to satisfy the *threshold conditions*; or
 - (iii) the *skilled person* reasonably believes that *firm* is not, may not be or may cease to be a going concern;
- (2) require the *skilled person* to prepare a report or collect or update information, as notified to the *firm* by the *FSA appropriate regulator*, within the time specified by the FSA within the time specified by the *appropriate regulator*; and
- (3) waive any duty of confidentiality owed by the *skilled person* to the *firm* which might limit the provision of information or opinion by that *skilled person* to the *FSA appropriate regulator* in accordance with (1) or (2). (See also SUP 5.5.13G and SUP 5.6)

5.5.2
[FCA/
PRA]

- G In complying with the contractual duty in SUP 5.5.1R(1) the *FSA appropriate regulator* expects that a *skilled person* appointed by a *firm* under section 166 (Reports by skilled persons) or section 166A (Appointment of skilled person to collect and update information) of the *Act* (Reports by skilled persons) will cooperate with the *FSA appropriate regulator* by, amongst other things, providing information or documentation about the planning and progress of the report and its findings and conclusions, if requested to do so. A *firm* should therefore ensure that the contract it makes with the *skilled person* requires and permits the *skilled person* to provide the following to the *FSA appropriate regulator* if requested to do so:

...

5.5.3
[FCA/
PRA]

- G If the *FSA appropriate regulator* is considering asking for the information specified in SUP 5.5.2G it will take into consideration the cost of the *skilled person* complying with the request, and the benefit that the *FSA appropriate regulator* may derive from the information. For example, in most cases, the *FSA appropriate regulator* will not need to request a *skilled person* to give it source data, *documents* and working papers. However, the *FSA appropriate regulator* may do so when it reasonably believes that this information will be relevant to any investigation it may be conducting, or

any action it may need to consider taking against the *firm*.

5.5.4 [FCA/PRA] G In complying with the contractual duty in *SUP 5.5.1R*, the *FSA appropriate regulator* expects that, in the case of substantial or complex reports, the *skilled person* will give a periodic update on progress and issues to allow for a re-focusing of the report if necessary. The channel of communication would normally be directly between the *skilled person* and the *FSA appropriate regulator*. However, the *FSA appropriate regulator* would also expect *firms* normally to be informed about the passage of information, and the *skilled person* would usually be expected to keep the *firm* informed of any communication between the *skilled person* and the *FSA appropriate regulator*.

5.5.5 [FCA/PRA] R A *firm* must ensure that the contract required by *SUP 5.5.1R*:

- (1) is governed by the laws of a part of the *United Kingdom*;
- (2) expressly
 - (a) provides that the *FSA appropriate regulator* has a right to enforce the provisions included in the contract under *SUP 5.5.1R* and *SUP 5.5.5R(2)*;
 - (b) provides that, in proceedings brought by the *FSA appropriate regulator* for the enforcement of those provisions, the *skilled person* is not to have available by way of defence, set-off or counterclaim any matter that is not relevant to those provisions;
 - (c) (if the contract includes an arbitration agreement) provides that the *FSA appropriate regulator* is not, in exercising the right in (a), to be treated as a party to, or bound by, the arbitration agreement; and
 - (d) provides that the provisions included in the contract under *SUP 5.5.1R* and *SUP 5.5.5R(2)* are irrevocable and may not be varied or rescinded without the *FSA's appropriate regulator's* consent; and
- (3) is not varied or rescinded in such a way as to extinguish or alter the provisions referred to in (2)(d).

5.5.6 [FCA/PRA] G The Contracts (Rights of Third Parties) Act 1999, or Scots common law, enables the *FSA appropriate regulator* to enforce the rights conferred on it under the contract required by *SUP 5.5.1R* against the *skilled person*.

5.5.7 [FCA/PRA] G If the *FSA appropriate regulator* considers it appropriate, it may request the *firm* to give it a copy of the draft contract required by *SUP 5.5.1R* before it is made with the *skilled person*. The *FSA appropriate regulator* will inform the *firm* of any matters that it considers require further clarification or discussion before the contract is finalised.

- 5.5.8 [FCA/PRA] G The *FSA appropriate regulator* expects the *firm*, including where applicable in complying with *Principle 11*, to give the *FSA appropriate regulator* information about the cost of the *skilled persons* report. This may include both an initial estimate of the cost as well as the cost of the completed report. This information is required to help inform the *FSA's appropriate regulator's* decision making in the choice of regulatory tools. Information about the number and cost of reports by *skilled persons* will be published by the *FSA appropriate regulator*.

Assisting the skilled person

- 5.5.9 [FCA/PRA] R A *firm* must provide all reasonable assistance to any *skilled person* appointed to provide a report under section 166 (Reports by skilled persons) or to collect or update information under section 166A (Appointment of skilled person to collect and update information) of the *Act* (~~Reports by skilled persons~~).

...

Responsibility for delivery

- 5.5.12 G ~~In complying with *Principle 11*, When a *firm* appoints a *skilled person* to provide a report under section 166 (Reports by skilled persons) or collect or update information under section 166A (Appointment of skilled person to collect and update information) of the *Act*, a *firm* is expected, including where applicable in complying with *Principle 11*, to take reasonable steps to ensure that a *skilled person* delivers a report or collects or updates information in accordance with the terms of his appointment.~~

Assistance to skilled persons from others

- 5.5.13 [FCA/PRA] G In respect of the appointment of a *skilled person* under section 166 of the *Act* (Reports by skilled persons), ~~Section section 166(57) of the *Act* (*Authority's power to require information*)~~ imposes a duty on certain *persons* to give assistance to a *skilled person*. The *persons* on whom this duty is imposed are those who are providing, or have at any time provided, services to any *person* falling within SUP 5.2.1G. They include suppliers under *material outsourcing arrangements*.
- 5.5.14 [FCA/PRA] G In respect of the appointment of a *skilled person* under section 166A (Appointment of skilled person to collect and update information) of the *Act*, under section 166A(5) a *skilled person* may require any *person* to provide all such assistance as the *skilled person* may reasonably require to collect or update the information in question.

5.6 Confidential information and privilege

- 5.6.1 [FCA/PRA] G Within the legal constraints that apply, the *FSA appropriate regulator* may pass on to a *skilled person* any information which it considers relevant to

PRA] the *skilled person's* function. A *skilled person*, being a primary recipient under section 348 of the *Act* (Restrictions on disclosure of confidential information by Authority etc.), is bound by the confidentiality provisions in Part XXIII of the *Act* (Public record, disclosure of information and cooperation) as regards confidential information he receives from the *FSA appropriate regulator* or directly from a *firm* or other *person*. A *skilled person* may not pass on confidential information without lawful authority, for example, where an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) or with the consent of the *person* from whom that information was received and (if different) to whom the information relates. The *FSA appropriate regulator* will indicate to a *skilled person* if there is any matter which cannot be discussed with the *person* in SUP 5.2.1G

...

5.6.3 [FCA/
PRA] G In respect of the appointment of a *skilled person* under section 166A (Appointment of skilled person to collect and update information) of the *Act*, a contractual or other requirement imposed on a *person* to keep any information confidential will not apply if:

- (1) the information is or may be relevant to anything required to be done as part of the *skilled person's* appointment under section 166A (Appointment of skilled person to collect and update information) of the *Act*;
- (2) a *firm* or a *skilled person* requests or requires the *person* to provide the information for the purpose of securing that those things are done; and
- (3) the *appropriate regulator* has approved the making of the request or the imposition of the requirement before it is made or imposed.

5.6.4 [FCA/
PRA] G A *firm* may provide information that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done in respect of the *skilled person's* collection or updating of information under section 166A (Appointment of skilled person to collect and update information) of the *Act*.

SUP 5 Annex 1G

Examples Non-exhaustive list of examples of when the FSA FCA may use the skilled person tool (This Annex belongs to SUP 5.3.1AG)

[FCA]

Toolkit purpose	Purpose for use of tool	Examples of reasons for use of tool
Diagnostic	<ul style="list-style-type: none"> To find out more about a concern (e.g. the result of a visit, risk assessment, or notification) and determine whether action is needed to mitigate a risk to the <i>regulatory objectives</i> or to determine whether there may have been a breach of a <i>rule</i> or of a <i>threshold condition</i> <u>or, in the case of an RIE, failure to meet the recognised requirements.</u> To assess the implications of, and <i>firm's*</i> response to, a change of circumstances e.g. <ul style="list-style-type: none"> - proposed entry into new business area; - new control structure; - merger or take-over; - new IT system; or - launch of an E-Commerce venture. 	<ul style="list-style-type: none"> Concern about effectiveness of the <i>firm's*</i> internal audit department. Concern about reliability of submitted financial returns. Inability of a <i>firm*</i> to quantify its current financial position. Assessment of consequences of incomplete customer files. Concern about quality of systems and controls. Indication of financial crime or <i>money laundering</i>. Concern about a <i>firm's*</i> <i>controller</i>. Assessment of control structure when a <i>bank</i> (specialising in consumer lending) diversifies into commercial lending.
Diagnostic/ monitoring	<ul style="list-style-type: none"> To verify information provided to the <i>FSA FCA</i>. 	<ul style="list-style-type: none"> Verification of a specific return to give the <i>FSA FCA</i> assurance of the quality of information provided.
	<ul style="list-style-type: none"> To collect information required by but not provided to the FCA by the <i>firm*</i>. To update information previously provided to the FCA but not kept up to date by the <i>firm*</i>. 	<ul style="list-style-type: none"> <u>Failure by a <i>firm*</i> to provide or keep up to date information required by the FCA.</u>
Monitoring	<ul style="list-style-type: none"> To review systems and controls To complement baseline monitoring 	<ul style="list-style-type: none"> Assessment of systems and controls in <i>firms*</i> where identified as a risk mitigation priority. In-depth review of part of a <i>firm*</i> which is material to the <i>firm's</i> risk profile but of which the <i>FSA FCA</i> does not consider it has an adequate, up-to-date understanding.
Preventative	<ul style="list-style-type: none"> To gather and analyse information on an identified risk and develop recommendations for resolution. 	<ul style="list-style-type: none"> Review of identified control weaknesses over <i>client money</i> to obtain recommendations to ensure compliance with the relevant <i>rules</i>.
Remedial	<ul style="list-style-type: none"> To assist in the design of a customer redress programme. To assist in the design of a remedial action plan. To oversee and report on remedial action plan. 	<ul style="list-style-type: none"> Where possible, the <i>FSA FCA</i> has identified possible losses from failure to reconcile assets or from mis-posting of transactions to the general ledger. To report on quality of work undertaken and adherence to milestones in the action plan.
* or, where applicable, the other <i>persons</i> in SUP 5.2.1G.		

Non-exhaustive list of examples of when the FCA may itself appoint a *skilled person* rather than require a *firm* to do so

Toolkit purpose	Purpose for use of tool	Examples of reasons for use of tool
<u>Diagnostic/ monitoring/ preventative/ remedial</u>	<u>(any of the above)</u>	<ul style="list-style-type: none"> • <u>To provide a report or information that is urgently required.</u> • <u>To assert a greater degree of control over the appointment and oversight of the skilled person due to the sensitive nature of the matter concerned.</u> • <u>To assert a greater degree of control over the appointment and oversight of the skilled person in circumstances where more than one <i>firm</i>* is the subject of the same report or information required.</u>

SUP 5 Annex 2G An overview of the appointment and report development process

[deleted]

Appendix 4

Designation of changes to SUP 5

Appendix 4: Designation of changes to SUP 5

Handbook Provision	Designation
...	...
SUP 5.1.1A	FCA
SUP 5.1.1B	FCA
SUP 5.1.2	FCA and PRA
SUP 5.1.3	FCA and PRA
SUP 5.2.1	FCA and PRA
SUP 5.2.2	FCA and PRA
SUP 5.3.1	FCA and PRA
SUP 5.3.1A	FCA
SUP 5.3.2	FCA and PRA
SUP 5.3.2A	FCA and PRA
SUP 5.3.3	FCA and PRA
SUP 5.3.4	FCA and PRA
SUP 5.3.5	FCA and PRA
SUP 5.3.6	FCA and PRA
SUP 5.3.7	FCA and PRA
SUP 5.3.8	FCA and PRA
SUP 5.3.9	FCA and PRA
SUP 5.3.10	FCA and PRA
SUP 5.4.1	FCA and PRA
SUP 5.4.1A	FCA and PRA
SUP 5.4.2	FCA and PRA
SUP 5.4.3	FCA and PRA

SUP 5.4.4	FCA and PRA
SUP 5.4.5	FCA and PRA
SUP 5.4.6	FCA and PRA
SUP 5.4.7	FCA and PRA
SUP 5.4.8	FCA and PRA
SUP 5.4.9	FCA and PRA
SUP 5.4.10	FCA and PRA
SUP 5.4.10A	FCA and PRA
SUP 5.4.11	FCA and PRA
SUP 5.4.12	FCA and PRA
SUP 5.4.13	FCA and PRA
SUP 5.5.1	FCA and PRA
SUP 5.5.2	FCA and PRA
SUP 5.5.3	FCA and PRA
SUP 5.5.4	FCA and PRA
SUP 5.5.5	FCA and PRA
SUP 5.5.6	FCA and PRA
SUP 5.5.7	FCA and PRA
SUP 5.5.8	FCA and PRA
SUP 5.5.9	FCA and PRA
...	...
SUP 5.5.12	FCA and PRA
SUP 5.5.13	FCA and PRA
SUP 5.5.14	FCA and PRA
SUP 5.6.1	FCA and PRA
...	...

SUP 5.6.3	FCA and PRA
SUP 5.6.4	FCA and PRA
SUP 5 Annex 1	FCA

Appendix 5

Changes to Chapter 6 of the Supervision manual (SUP 6)

VARIATION OF PERMISSION LEGAL CUTOVER INSTRUMENT 2012

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137R (General supplementary powers); and
 - (c) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers referred to above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Powers exercised by the Prudential Regulation Authority

- C. The Prudential Regulation 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 137E (The PRA’s general rules); and
 - (2) section 137R (General supplementary powers).
- D. The rule-making powers listed above are specified for the purposes of section 138G (Rule-making instruments) of the Act.

Commencement

- E. This instrument comes into force on [date].

Amendments to the Handbook

- F. The modules of the Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Supervision manual (SUP)	Annex B

Citation

- G. This instrument may be cited as the Variation of Permission Legal Cutover Instrument 2012].

By order of the Board of the Financial Conduct Authority
[*date*]

By order of the Board of the Prudential Regulation Authority
[*date*]

Annex A

Amendments to the Glossary of definitions

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>own-initiative requirement power</i>	The <i>FCA</i> 's power under section 55L(3) of the <i>Act</i> or the <i>PRA</i> 's power under section 55M(3) of the <i>Act</i> to impose a new <i>requirement</i> on a <i>firm</i> , to vary a <i>requirement</i> that it has imposed on the <i>firm</i> or to cancel any such <i>requirement</i> otherwise than on the application of a <i>firm</i> .
<i>own-initiative variation power</i>	The <i>FCA</i> 's or the <i>PRA</i> 's power under section 55J (Variation or cancellation on initiative of regulator) to vary or cancel a <i>Part 4A permission</i> otherwise than on the application of a <i>firm</i> .

Amend the following definition. In this text, underlining indicates new text and striking through indicates deleted text.

<i>own-initiative powers</i>	The <u><i>FCA</i>'s or the <i>PRA</i>'s <i>own-initiative variation power</i> and <i>own-initiative requirement power</i></u> . FSA's power under section 45 of the <i>Act</i> (Variation etc on the Authority's own initiative) to vary or cancel a <i>Part IV permission</i> otherwise than on the application of a <i>firm</i>. ⁺
------------------------------	--

Annex B

Amendments to the Supervision manual (SUP)

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

6 Applications to vary and cancel Part ~~IV~~ 4A permission and to impose, vary or cancel requirements

6.1 Application, interpretation and purpose

Application

6.1.1 G This chapter applies to every *firm* with a ~~Part IV permission~~ Part 4A permission which wishes to:
[FCA/
PRA]

- (1) vary its ~~Part IV permission~~ Part 4A permission;
- (2) cancel its ~~Part IV permission~~ Part 4A permission and end its *authorisation*;
- (3) have imposed on it a new requirement;
- (4) vary a requirement imposed on it; or
- (5) cancel a requirement imposed on it.

6.1.2 G If appropriate, a *firm* which is an *authorised fund manager* should also refer to *COLL 7* for *guidance* on the termination of *ICVCs* and *AUTs* and on winding up *authorised funds* that are not commercially viable.
[FCA/
PRA]

...

Interpretation

- 6.1.3A G (1) In SUP 6 the “relevant regulator” is the regulator to which a *firm* with a *Part 4A permission* has made or can make (in accordance with SUP 6) an application to vary or cancel its *permission* or to have imposed on it a new *requirement* or to vary or cancel any existing *requirement* (see SUP 6.2.3AG to SUP 6.2.3EG).
[FCA/
PRA]
- (2) Where the *PRA* can only determine an application with the consent of the *FCA*, the *FCA* may request further information as if it were the relevant regulator.
- (3) In some instances, the *Act* requires the *FCA* and the *PRA* to consult with each other prior to exercising their powers under the *Act*. Details of where consultation is required have not been set out in SUP 6.

Where a provision in SUP 6 makes reference to a power, the exercise of which by the FCA or the PRA (as the case may be) requires consultation under the Act, firms should be aware that the regulator concerned will need to consult the other regulator before exercising that power.

Purpose

- 6.1.4 G This chapter explains:
- [FCA/
PRA]
- (1) how a firm with ~~Part IV permission~~ a Part 4A permission can apply to the FSA relevant regulator to vary that *permission*;
 - (2) how a firm which has ceased to carry on any of the *regulated activities* for which it has a ~~Part IV~~ 4A permission, or which expects to do so in the short term (normally less than six months), should apply to the FSA relevant regulator to cancel that *permission* completely;
 - (2A) how a firm with a Part 4A permission can apply to the relevant regulator to:
 - (a) have imposed on it a new requirement;
 - (b) vary a requirement imposed on it; or
 - (c) cancel a requirement imposed on it.
 - ...
 - (4) how the FSA relevant regulator assesses those applications.
- 6.1.5 G This chapter also outlines the ~~FSA's~~ relevant regulator's powers to withdraw *authorisation* from a firm whose ~~Part IV permission~~ Part 4A permission has been cancelled at the firm's request. ~~It does not, however, cover the FSA's appropriate regulator's use of its own initiative powers to vary or cancel a firm's Part IV 4A permission (see SUP 7 (Individual requirements) and EG 8 (Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms)).~~
- [FCA/
PRA]
- 6.1.6 G This chapter does not cover the FCA's use of its own-initiative variation power to vary or cancel a firm's Part 4A permission or its own-initiative requirement power to impose, vary or cancel a requirement (See SUP 7 (Individual requirements) and EG 8 (Variation and cancellation of permission on the FCA's own initiative and intervention against incoming firms)).
- [FCA]

6.2 Introduction

- 6.2.1 G ~~A firm authorised under Part IV 4A of the Act (Permission to carry on regulated activity) has a single Part IV permission Part 4A permission granted by the ~~FSA~~ FCA or the PRA. A firm's ~~Part IV permission~~ Part 4A permission specifies all or some of the following elements (see PERG 2 Annex 2G (Regulated activities and the permission regime) and the ~~FSA~~ information online at [web address to be inserted]): ~~website "How do I get authorised": <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>)~~~~
- ...
- 6.2.2 G Under section 20(1) and 20(1A) of the *Act* (Authorised persons acting without permission), a *firm* is prohibited from carrying on a *regulated activity* in the *United Kingdom* (or purporting to do so) otherwise than in accordance with its *permission*.
- 6.2.3 G ~~If a firm wishes to change its Part IV permission, it can apply to the ~~FSA~~ under section 44 of the *Act* (Variation etc. at request of authorised person) for a variation or cancellation of its Part IV permission. SUP 6.2.5G sets out the differences between these types of application and the circumstances in which they should be made and SUP 6 Annex 1 gives an overview of the considerations in these cases. [deleted]~~
- 6.2.3A G If an *FCA-authorised person* wishes to change its *Part 4A permission* to:
[FCA]
- (1) add a *regulated activity*, other than a *PRA-regulated activity*; or
 - (2) remove a *regulated activity* from those to which the *permission* relates; or
 - (3) vary the description of a *regulated activity* to which the *permission* relates; or
 - (4) cancel the *permission*;
- it can apply to the *FCA* under section 55H of the *Act* (Variation by *FCA* at request of authorised person).
- 6.2.3B G If an *FCA-authorised person* wishes to change its *Part 4A permission*, by adding to the *regulated activities* to which the *permission* relates one or more *regulated activities*, which include a *PRA-regulated activity*, it can apply to the *PRA* under section 55I of the *Act* (Variation by *PRA* at request of authorised person). The *PRA* can determine such an application only with the consent of the *FCA*.
[FCA/
PRA]
- 6.2.3C G If a firm with a *Part 4A permission* wishes the *FCA* to:
[FCA]
- (1) impose a new *requirement*;

(2) vary a requirement imposed by the FCA; or

(3) cancel such a requirement.

it can apply to the FCA under section 55L(5) of the Act (Imposition of Requirements by FCA).

6.2.3D G If a PRA-*authorised person* wishes to change its Part 4A permission to:
[PRA]

(1) add a regulated activity to those to which the permission relates;

(2) remove a regulated activity from those to which the permission relates;

(3) vary the description of a regulated activity to which the permission relates; or

(4) cancel the permission;

it can apply to the PRA under section 55I of the Act (Variation by PRA at request of authorised person). The PRA can determine such an application, other than an application to cancel the permission, only with the consent of the FCA.

6.2.3E G If a PRA-*authorised person* wishes the PRA to:
[PRA]

(1) impose a new requirement;

(2) vary a requirement imposed by the PRA; or

(3) cancel such a requirement.

it can apply to the PRA under section 55M(5) of the Act (Imposition of Requirements by PRA).

6.2.4 G A *firm* intending to expand its business should assess, taking appropriate professional advice where necessary, whether it will need to ~~apply to the FSA to vary its Part IV permission~~ make an application in accordance with SUP 6 before making any changes to its business.
[FCA/
PRA]

6.2.4A G If a *firm* intends to transfer its business to a different legal entity (~~for example, the business is to be transferred from a sole trader to a partnership or the other way around~~) it will need to apply to the FSA relevant regulator for cancellation of its ~~Part IV permission~~ Part 4A permission and the entity to which the business is to be transferred will need to apply for a ~~Part IV permission~~ Part 4A permission.
[FCA/
PRA]

6.2.4B G SUP 6.2.5G sets out the differences between these types of applications and

[FCA/
PRA]

the circumstances in which they should be made.

6.2.5

G

Variation and cancellation of Part IV 4A permission and imposition, variation and cancellation of requirements. See SUP 6.2.3AG to SUP 6.2.3EG

[FCA
and
PRA]

Question	Variation of Part IV 4A permission	Cancellation of Part IV 4A permission	<u>Imposition, variation and cancellation of requirements</u>
What does the application apply to?	Individual elements of a firm's Part IV permission <u>Part 4A permission</u> . Variations may involve adding or removing categories of <i>regulated activity</i> or <i>specified investments</i> or varying or removing any limitations or requirements in the firm's Part IV permission <u>Part 4A permission</u> .	A firm's entire Part IV permission <u>Part 4A permission</u> and not individual elements within it.	<u>Any requirement imposed on a firm with a Part 4A permission. Requirements may involve requiring the firm concerned to take or refrain from taking a specified action.</u>
In what circumstances is it usually appropriate to make an application?	If a firm: 1. wishes to change the <i>regulated activities</i> it carries on in the <i>United Kingdom</i> under a Part IV permission <u>Part 4A permission</u> (SUP 6.3); or 2. has the ultimate intention of ceasing carrying on <i>regulated activities</i> but due to the nature of those <i>regulated</i>	If a firm: 1. has ceased to carry on all of the <i>regulated activities</i> for which it has Part IV permission <u>Part 4A permission</u> (SUP 6.4); or 2. wishes or expects to cease carrying on all of the <i>regulated activities</i> for which it has Part IV permission <u>Part 4A</u>	If a firm: <u>1. wishes to have a new requirement imposed on it; or</u> <u>2. wishes to vary or cancel an existing requirement imposed by the FCA or PRA (for example, if anything relating to the firm's individual</u>

	<p><i>activities</i> (for example, <i>accepting deposits</i>, or <i>insurance business</i>) it will require a long term (normally over six months) to wind down (run off) its business (see SUP 6.2.8G to SUP 6.2.11G and SUP 6 Annex 4).</p>	<p><u>permission</u> in the short term (normally not more than six months). In this case, the <i>firm</i> may apply to cancel its Part IV permission <u>Part 4A permission</u> prior to ceasing the <i>regulated activities</i> (see SUP 6.4.3G).</p>	<p><u>circumstances change and any existing requirement should be varied or canceled).</u></p>
<p>Where do I find a summary of the application procedures?</p>	<p>See SUP 6 Annex 2G.</p>	<p>See SUP 6 Annex 3G.</p>	

6.2.6 G A *firm* which is seeking to:

[FCA/
PRA]

- (1) to vary its ~~Part IV permission~~ Part 4A permission substantially; or
- (2) to cancel its ~~Part IV permission~~ Part 4A permission; or
- (3) the imposition of a new requirement and/or the variation or cancellation of any existing requirement;

should discuss its plans with its ~~usual~~ supervisory contact at the ~~FSA~~ relevant regulator as early as possible before making an application, in order to comply with *Principle 11* (see SUP 15.3.7G (~~Notifications to the FSA~~)). These discussions will help the ~~FSA~~ relevant regulator and the *firm* to agree the correct approach for the *firm*.

6.2.7 G If a *firm* intends to cease carrying on one or more *regulated activities* permanently, it should give prompt notice to the ~~FSA~~ appropriate regulator to comply with *Principle 11* (see SUP 15.3.8G(1)(d)). A *firm* should consider whether it needs to notify the ~~FSA~~ appropriate regulator before applying to vary or cancel its ~~Part IV permission~~ Part 4A permission.

Firms with long term liabilities to customers

6.2.8 G Discussions with the ~~FSA~~ appropriate regulator are particularly relevant where the *firm* has to discharge obligations to its *customers* or policyholders before it can cease carrying on a *regulated activity*. This may be the case, for example, where the *firm* is an *insurer*, a *bank* a *dormant account fund*

operator, or, as is often the case, holding *client money* or *customer assets*.

- 6.2.9 G If an *insurer*, a *bank* or a *dormant account fund operator* wishes to cease carrying on all *regulated activities* for which it has ~~*Part IV permission*~~ *Part 4A permission*, it will usually be necessary to wind down the business over a long term period which is normally more than six months. This may also be the case for a *firm* holding *client money* or *customer assets*. In these circumstances, it will usually be appropriate for the *firm* to apply for variation of its ~~*Part IV permission*~~ *Part 4A permission* and/or imposition of a new *requirement*, variation of any existing *requirement* or cancellation of such a *requirement* before commencing the wind-down. A *firm* should only make an application for cancellation of *permission* when it expects to complete its wind-down (run-off) within six months.
- [FCA/
PRA]
- 6.2.10 G A *firm* which is winding down (running off) its activities should contact its ~~usual~~ supervisory contact at the ~~*FSA*~~ *appropriate regulator* to discuss its circumstances. ~~The *FSA* will discuss~~ Discussions will focus on the *firm's* winding down plans and the need for the *firm* to vary or cancel its ~~*Part IV permission*~~ *Part 4A permission* and/or the need to impose a new *requirement*, vary any existing *requirement* or cancel such a *requirement*. Following these discussions ~~an application for variation or cancellation of *Part IV 4A permission*, as appropriate, should usually be made by the *firm*, although, in certain circumstances, the *FSA* may use its *own-initiative powers* under section 45 of the *Act* (Variation etc. on the *FSA's* own initiative) (see *SUP 7* and *EG 8* (Variation and cancellation of permission on the *FSA's* own initiative and intervention against))~~ the *firm* should usually make the relevant application, as appropriate.
- [FCA/
PRA]
- 6.2.10 G In certain circumstances the *FCA* and/or the *PRA* may use their *own-initiative powers* (see *SUP 7* and *EG 8*) (Variation and cancellation of permission on the *FCA's* own initiative and intervention against incoming firms)).
- A
[FCA/
PRA]
- 6.2.11 G ...
- [FCA/
PRA]
- (2) The guidance in *SUP 6* Annex 4 applies to any *firm* that is applying for variation of ~~*Part IV permission*~~ *Part 4A permission* or for the imposition, variation or cancellation of a *requirement* before it applies for cancellation of ~~*Part IV permission*~~ *Part 4A permission* to enable it to wind down (run off) its business over a long term period of six months or more. It will apply to most *insurers* and *banks* and, in some circumstances, ~~as advised by the *FSA*~~, to *firms* holding *client money* or *customer assets*.
- (3) If a *firm* wishes to cease carrying on some of its *regulated activities*, or the *specified investments* in respect of which the activities are carried on, the ~~*FSA*~~ *appropriate regulator* may consider it appropriate for the *firm* to comply with the additional procedures in *SUP 6* Annex 4. This

would depend on the scale and nature of the *regulated activities* concerned. This might be the case, for example, if the *firm* is ceasing a significant part of its business in respect of which it has outstanding obligations to *customers* and ~~the FSA believes~~ it is believed that the additional procedures would protect *consumers*.

UK firms exercising EEA or Treaty rights

- 6.2.12 G A UK firm should assess the effect of any change to its ~~Part IV 4A~~ permission, or any requirements, on its ability to continue to exercise any *EEA right* or *Treaty right* and discuss any concerns with its ~~usual~~ appropriate supervisory contact(s) ~~at the FSA. A variation of Part IV permission~~ This may also change the applicable provisions with which it is required to comply by a *Host State*.
[FCA/PRA]
- 6.2.13 G A UK firm which, as well as applying to vary or cancel its ~~Part IV permission~~ Part 4A permission, wishes to vary or terminate any business which it is carrying on in another *EEA State* under one of the *Single Market Directives*, should follow the procedures in SUP 13 (Exercise of passport rights by UK firms) on varying or terminating its *branch* or *cross border services* business.
[FCA/PRA]

The Lloyd's market

- 6.2.14 G A firm making an application to ~~vary or cancel its Part IV permission in accordance with SUP 6~~ which requires any approval from the Society of Lloyd's should apply to the *Society* for this at the same time as applying to the ~~FSA relevant regulator for the variation or cancellation~~. See SUP 6 Annex 4 for additional procedures.
[FCA/PRA]

6.3 Applications for variation of permission and/or imposition, variation or cancellation of requirements

What is a variation of permission?

- 6.3.1 G Under section 44 of the *Act*, a firm may apply to the *FSA* to vary its *Part IV permission* to:
(1) allow it to carry on further *regulated activities*; or
(2) reduce the number of *regulated activities* it is permitted to carry on; or
(3) vary the *FSA's* description of its *regulated activities* (including by the removal or variation of any *limitations*); or
(4) cancel any *requirement* applied for by the firm or imposed by the *FSA* under section 43 of the *Act* (Imposition of requirements); or
(5) vary any such *requirement*. [deleted]
- 6.3.1A G Under section 55H of the *Act*, an *FCA-authorized person* may apply to the *FCA* to vary its *Part 4A permission* to:
[FCA]

- (1) allow it to carry on further *regulated activities*, other than a *PRA-regulated activity*; or
- (2) reduce the number of *regulated activities* it is permitted to carry on; or
- (3) vary the description of its *regulated activities* (including by the removal or variation of any *limitations*).

6.3.1B [FCA/PRA] G Under section 55I of the *Act*, an *FCA-authorized person* may apply to the *PRA* to vary its *Part 4A permission* to add *regulated activities* which include a *PRA-regulated activity*.

6.3.1C [PRA] G Under section 55I of the *Act*, a *PRA-authorized person* may apply to the *PRA* to vary its *Part 4A permission* to:

- (1) allow it to carry on further *regulated activities*; or
- (2) reduce the number of *regulated activities* it is permitted to carry on; or
- (3) vary the description of its *regulated activities* (including by the removal or variation of any *limitations*).

6.3.2 G ~~An application for variation of *Part IV 4A permission* may include one or more of SUP 6.3.1G(1)(5). For example, a *firm* may apply to vary its *Part IV 4A permission* to add a new *regulated activity* and at the same time remove a *regulated activity* for which it currently has *permission*. [deleted]~~

Applications to impose, vary or cancel requirements

6.3.2A [FCA] G Under section 55L(5) of the *Act* a *firm* with a *Part 4A permission* may apply to the *FCA* for the imposition of a new *requirement* and/or the variation or cancellation of any *requirement* previously imposed by the *FCA*.

6.3.2B [PRA] G Under section 55M(5) of the *Act*, *PRA-authorized person* may apply to the *PRA* for the imposition of a new *requirement* and/or the variation or cancellation of any *requirement* previously imposed by the *PRA*.

The scope of applications

6.3.2C [FCA] G An application may relate to one or more of SUP 6.3.1AG and SUP 6.3.2AG. For example, a *firm* may apply to vary its *Part 4A permission* to add a new *regulated activity* and at the same time remove a *regulated activity* for which it currently has *permission*.

6.3.2D [PRA] G An application may relate to one or more of SUP 6.3.1C and SUP 6.3.2BG. For example, a *firm* may apply to vary its *Part 4A permission* to add a new *regulated activity* and at the same time remove a *regulated activity* for which it currently has *permission*.

6.3.3 G In applying for a variation of ~~*Part IV permission*~~ *Part 4A permission*, a branch of a *firm* from outside the *EEA* should be mindful of any continuing

[FCA/
PRA] requirements referred to in the rest of the *Handbook*.

Applications to add additional regulated activities

6.3.4 G In determining the activities and *specified investments* for which a ~~Part IV~~ Part 4A ~~permission~~ is required, and whether to apply for a variation of that ~~permission~~, a *firm* may need to take professional advice and may also wish to discuss this with its usual appropriate supervisory contact ~~at the FSA~~.

[FCA/
PRA]

6.3.5 G Before applying to vary its *permission*, a *firm* should determine whether there are any statutory restrictions that do not allow combinations of certain types of *regulated activity*, particularly for *insurance business* or *UCITS managers*. For example, the ~~FSA PRA~~ will not grant a variation of ~~Part IV permission~~ Part 4A permission to allow a *friendly society* to carry on reinsurance business as this is not permitted under the Friendly Societies Acts 1974 and 1992. A *firm* should discuss its plans with its usual appropriate supervisory contact ~~at the FSA~~.

[FCA/
PRA]

6.3.6 G If a *firm* is seeking a variation of ~~Part IV permission~~ Part 4A permission to add categories of *regulated activities*, it should be mindful of the directive requirements referred to at SUP 6.3.42G relating to the need to commence new activities within 12 months.

[FCA/
PRA]

Applications to remove certain regulated activities

6.3.7 G If a *firm* wishes to cease carrying on an activity for which it has ~~Part IV permission~~ Part 4A permission, it will usually apply to vary its ~~Part IV permission~~ Part 4A permission to remove that activity. If a *firm* wishes to cease carrying on an activity in relation to any *specified investment*, it will usually apply to vary its ~~Part IV permission~~ Part 4A permission to remove that *specified investment* from the relevant activity.

[FCA/
PRA]

How a variation of permission may affect the firm's approved persons

6.3.8 G (1) Where a *firm* is submitting an application for variation of ~~Part IV permission~~ Part 4A permission which would lead to a change in the *controlled functions* of its *approved persons*, it should, at the same time and as appropriate:

[FCA/
PRA]

- (a) make an application ~~to the FSA~~ for an internal transfer of an *approved person*, Form E (Internal transfer), or make an application ~~to the FSA~~ for an individual to perform additional *controlled functions*, the relevant Form A (Application); see SUP 10.13.3D to SUP 10.13.5G;
- (b) notify the ~~FSA~~ appropriate regulator of any *approved person* who has ceased to perform a *controlled function* specified by that regulator, Form C (Ceasing to perform controlled functions); see SUP 10.13.6R to SUP 10.13.13G.

- (2) If the *firm* intends to recruit new individuals to perform *controlled functions*, it should apply to the *FSA* for approval of the individuals as *approved persons* as soon as possible using Form A (Application); see *SUP* 10.12 .

How a variation of permission may change a firm's prudential category

- 6.3.9 G ~~A variation of *Part IV permission* may, in some cases, lead to a change in a firm's prudential category or sub-category (see *SUP* App 1). For example, an investment management firm which varies its *Part IV permission* to include accepting deposits and as a result meets the definition of a bank, would move to the prudential category for a bank (see *SUP* App 1.3.1G). [deleted]~~
- 6.3.10 G ~~Even if a variation of *permission* does not itself lead to a change in a firm's prudential category or sub-category, the *FSA* may use its their own initiative powers to require a firm to comply with a different category or sub-category of prudential rules where it considers this to be appropriate. For details of when and how the *FSA* may use its own initiative powers in this context, see *SUP* 7. [deleted]~~

Variation of permission involving insurance business

- 6.3.11 G ~~A firm with *Part IV permission* Part 4A permission to carry on insurance business, which is applying for a variation of its *Part IV permission* Part 4A permission to add further insurance activities or *specified investments*, will be required to submit particular information on its existing activities as part of its application. This includes the *scheme of operations* which is required to be submitted as part of the application pack (for further details on the *scheme of operations*, see *SUP* App 2 (Insurers: scheme of operations)).~~
- [FCA/
PRA]
- 6.3.12 G In applying to vary its ~~*Part IV permission*~~ Part 4A permission to add categories of *specified investments*, in relation to *insurance business*, a firm carrying on *insurance business* will need to determine the *classes* of *specified investments* relating to *effecting* and *carrying out contracts of insurance* for which variation of ~~*Part IV permission*~~ Part 4A permission will be necessary, having regard to whether certain *classes* of contract may qualify to be effected or carried out on an ancillary or supplementary basis (see *SUP* 3.12.6G to *SUP* 3.12.12G).
- [FCA/
PRA]
- 6.3.13 G The application for variation of ~~*Part IV permission*~~ Part 4A permission will need to provide information about the *classes* of *contract of insurance* for which variation of ~~*Part IV permission*~~ Part 4A permission is requested and also those *classes* qualifying to be carried on, on an ancillary or supplementary basis. For example, an *insurer* applying to vary its *permission* to include class 10 (motor vehicle liability, other than carrier's liability) must satisfy the ~~*FSA*~~ FCA that it will meet, and continue to meet, the appointment of claims representatives threshold condition-2A (~~Appointment of claims representatives~~). ~~Firms~~ should note that, although the ~~*FSA*~~ relevant regulator is able in principle to use its power to give ~~*Part IV permission*~~ Part 4A permission for an applicant to carry on a *regulated activity* for which it did not originally apply, this is not possible under the Insurance Directives, which set
- [FCA/
PRA]

out minimum information requirements for an application for *authorisation* including information on the specified investments the applicant proposes to deal in.

- 6.3.14 G (1) A *firm* carrying on *insurance business* which is seeking to cease such business in respect of one or more classes of *specified investment*, but which is not intending to cease all *insurance business*, should apply to vary its ~~*Part IV permission*~~ *Part 4A permission* to remove the activity of *effecting contracts of insurance* in respect of those *specified investments* in relation to which it no longer wishes to carry on business. A *firm* intending to cease all *insurance business* should refer to SUP 6 Annex 4.
- [PRA]
- (2) If the application for variation of ~~*Part IV permission*~~ *Part 4A permission* is granted by the ~~*FSA*~~ *PRA*, the *firm* will have ~~*Part IV permission*~~ *Part 4A permission* only to carry out contracts of *insurance* in respect of the *specified investments* in relation to which it no longer wishes to carry on business (see SUP 6 Annex 4). This will allow the *firm* to run off this aspect of its business. When the business in question has been run-off completely, the *firm* should then apply to vary its ~~*Part IV permission*~~ *Part 4A permission* to remove the relevant *classes of specified investment*.

The application for variation of permission and/or imposition, variation or cancellation of requirements

- 6.3.15 D (1) A *firm* other than a *credit union* wishing to ~~vary its *Part IV permission*~~ make an application under SUP 6 must apply online at ~~www.fsa.gov.uk~~ [web address to be confirmed] using the form specified on the ~~*FSA's*~~ *ONA* system.
- [FCA/
PRA]
- (2) ~~A *credit union* wishing to vary its *Part IV permission* must apply using the form in SUP 6 Ann 5D and submit its application in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).~~ ~~[deleted]~~
- (3) Until the application has been determined, a *firm* which submits an application ~~for variation of *Part IV permission*~~ must inform the ~~*FSA*~~ relevant regulator of any significant change to the information given in the application immediately it becomes aware of the change.
- (3A) Where an application requires the consent of the *FCA*, a *firm* which submits an application must inform the *FCA* of any significant change to the information given in the application immediately it becomes aware of the change.
- (4) Where a *firm* is obliged to submit any form, notice or application online under (1), if the ~~*FSA's*~~ *ONA* information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a *firm* must submit any form, notice or application by using the form in SUP 6

- Ann 5D and submitting it in the way set out in *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification).
- 6.3.15 G (1) If the ~~*FSA's*~~ ONA information technology systems fails ~~systems fails~~ and online submission is unavailable for 24 hours or more, the ~~*FSA*~~ relevant regulator will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in *SUP* 6.3.15D(4) and *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification) should be used.
- [FCA/
PRA]
- (2) Where *SUP* 6.3.15D(4) applies to a *firm*, *GEN* 1.3.2R (Emergency) does not apply.
- 6.3.15 G A credit union wishing to make an application under *SUP* 6 must apply using the form in *SUP* 6 Ann 5D and submit its application in the way set out in *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification).
- B
[PRA]
- 6.3.16 G (1) Section ~~54(2)~~ 55(U)(2) of the *Act* (Applications under this Part) requires that the application for variation of ~~*Part IV permission*~~ *Part 4A permission* must contain a statement:
- [FCA/
PRA]
- ...
- (1A) Section 55(U)(3) of the *Act* requires that an application for variation of a requirement imposed under section 55L or 55M or the imposition of a new requirement must contain a statement of the desired variation or requirement.
- (2) The full form and content of the application for variation of ~~*Part IV permission*~~ *Part 4A permission* or for the imposition or variation of a requirement is a matter for direction by the ~~*FSA*~~ relevant regulator, who will determine the additional information and documentation required on a case by case basis.
- 6.3.17 G (1) [deleted]
- [FCA/
PRA]
- (2) A *firm* is advised to discuss its application with ~~its usual supervisory contact at the *FSA*~~ the relevant regulator before submission, particularly if it is seeking a variation of *Part 4A permission* or imposition, variation or cancellation of a requirement within a short timescale. A *firm* is also advised to include as much detail as possible (including any additional information identified by its supervisors at this stage) with its application.
- 6.3.18 G The ~~*FSA*~~ relevant regulator, as soon as possible after receipt of an application, will advise the *firm* of any additional information which is required as part of its application (see *SUP* 6.3.23G to *SUP* 6.3.27G). The amount of information
- [FCA/

PRA] ~~the FSA will required~~ will vary depending on the scale of the variation in the context of the *firm* as a whole, and the nature, risk profile and complexity of the variation.

Applications from firms winding down (running off) business over the long term

6.3.19 G A *firm* which is making an application for variation of ~~Part IV permission~~ Part 4A permission to wind down (run off) its business before applying for a cancellation of that *permission* (see SUP 6.2.9G) should read SUP 6 Annex 4 for details of the additional procedures that apply.

[FCA/
PRA]

Applications involving significant changes

6.3.20 G In certain cases, ~~FSA~~ the relevant regulator may consider that granting an application for imposition, variation or cancellation of any requirement or for variation of ~~Part IV permission~~ Part 4A permission which includes adding further *regulated activities*, or changing a ~~requirement~~ *or limitation* would cause a significant change in the *firm's* business or risk profile. In these circumstances, the ~~FSA~~ relevant regulator may require the *firm* to complete appropriate parts of the full application pack (see the ~~FSA~~ website "How do I get authorised": <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>) [web address to be confirmed], as directed by the ~~FSA~~ relevant regulator.

Applications for variation involving significant changes may be processed by the *firm's* ~~usual~~ appropriate supervisory contact ~~at the FSA~~, in conjunction with the ~~Permissions department~~ Authorisations Team. Examples of an application for imposition, variation or cancellation of a requirement and for variation of ~~Part IV permission~~ Part 4A permission which may represent a significant change include, but are not limited to, an application:

...

(3) to remove a *requirement* preventing a *firm* from holding or controlling *client money*; ~~or~~

~~(4) which causes the firm to change prudential category by, for example, removing a requirement relating to prudential category (see SUP App 4).~~

6.3.21 G A *firm* that wishes to make a significant change to its business, or is unsure whether the changes it is proposing would be considered to be significant, should contact its ~~usual supervisory contact at the FSA~~ the relevant regulator. The ~~FSA~~ relevant regulator will discuss with the *firm* whether it will be required to submit parts of the application pack and whether any reports from third parties may be required.

[FCA/
PRA]

6.3.22 R G The fees payable for a *firm* applying for the imposition, variation or cancellation of any requirements and/or a variation of its ~~part IV permission~~ Part 4A permission are set out in FEES 3.

[FCA/
PRA]

Information to be supplied to the ~~FSA~~ relevant regulator as part of the application

- 6.3.23 [FCA/PRA] G (1) The *FSA relevant regulator* may ask for any information it reasonably requires before determining the application. The information required will be determined on a case by case basis, taking into account the *FSA's relevant regulator's* existing knowledge of the *firm* and the ~~variation change~~ requested. The *FSA relevant regulator* will advise the *firm* of the information required at an early stage in the application process.
- (2) The nature of the information and documents requested will be related to the risks posed to the *FSA's relevant regulator's regulatory statutory objectives* by the *regulated activities* and any *unregulated activities* that the *firm* is carrying on or is seeking to carry on. This information will be proportional to the nature of the business which the *firm* intends to carry on or the risks posed by the *firm*.

- 6.3.24 [FCA/PRA] G (1) The information the *FSA relevant regulator* may require includes, but is not limited to, the examples given in *SUP 6.3.25G*:

6.3.25 [FCA/PRA] G **Information which may be required. See *SUP 6.3.24G***

Type of business	Information which may be required
All	1. Details of how the <i>firm</i> plans to comply with the <i>FSA's relevant regulator's</i> regulatory requirements relating to any additional <i>regulated activities</i> it is seeking to carry on.
	...
<i>Insurance business</i>	...
	2. (If the application seeks to vary a <i>permission</i> to include <i>motor vehicle liability insurance business</i>) details of the claims representatives required by <i>threshold condition 2A (Appointment of claims representatives)</i> the appointment of <u>claims representatives <i>threshold condition</i></u> , if applicable.
<i>Accepting deposits and designated investment business</i>	1. A business plan which includes the impact of the variation on the <i>firm's</i> existing or continuing business financial projections for the <i>firm</i> , including the impact of the requested variation of <i>Part IV permission</i> <u>change</u> on the <i>firm's</i> financial resources and capital adequacy requirements.

- 6.3.26 [FCA/PRA] G Specific information may also be required by the *FSA relevant regulator* on the activities the *firm* intends to cease, or cease carrying on in relation to any *specified investments* (see *SUP 6 Annex 4*).

6.3.27 G When determining whether to grant an application, the FSA relevant regulator may request further information, including reports from third parties such as the *firm's* auditors, and may require meetings with, and visits to, the *firm*. The FSA relevant regulator may also require a statement from members of the *firm's governing body* confirming, to the best of their knowledge, the completeness and accuracy of the information supplied. The FSA relevant regulator may also discuss the application with other regulators, exchanges.

When will ~~the FSA grant~~ an application for variation of permission and/or imposition or variation of requirements be granted?

6.3.28 G (1) The FSA relevant regulator is required by section 41(2) ~~55B(3)~~ of the *Act* to ensure that a *firm* applying to vary its ~~Part IV permission~~ Part 4A permission or to impose or vary a requirement satisfies and will continue to satisfy the threshold conditions in relation to all the regulated activities for which the *firm* has or will have ~~Part IV permission~~ Part 4A permission after the ~~variation~~ determination of the application. However, the FSA's duty under the Act does not prevent it, having regard to that duty, from taking such steps as it considers necessary in relation to a particular *firm*, to meet any of its regulatory objectives. This may include ~~granting a firm's application for variation of Part IV 4A permission~~ when it wishes to wind down (run off) its business activities and cease to carry on new business as a result of no longer being able to satisfy the threshold conditions.

(2) In addition, the FSA may refuse the application if it appears that any of its regulatory objectives would be adversely affected if the application were to be granted and it is desirable in order to meet any of its regulatory objectives for the application to be refused. [deleted]

6.3.28 G A Where a *firm* applies to the PRA for the variation of its Part 4A permission, the FCA, in giving consent to such an application or imposing any requirements on the *firm*, is required by section 55B(3) of the *Act* to ensure that the *firm* satisfies and will continue to satisfy the threshold conditions for which the FCA is responsible in relation to all the regulated activities for which the *firm* has or will have Part 4A permission after the variation.

6.3.28 G B (1) The FCA's duty under s55B(3) of the Act does not prevent it, having regard to that duty, from taking such steps as it considers necessary in relation to a particular *firm*, to meet any of its operational objectives. This may include granting or consenting to (as the case may be) a firm's application for variation of Part 4A permission when it wishes to wind down (run off) its business activities and cease to carry on new business as a result of no longer being able to satisfy the threshold conditions.

(2) The FCA may refuse an application, or refuse to give its consent to an application, under s55B(3) of the Act if it considers that it is desirable to do so in order to advance any of its operational objectives.

- 6.3.28 G (1) The PRA's duty under s55B(3) of the Act does not prevent it, having regard to that duty, from taking such steps as it considers necessary in relation to a particular firm, to meet any of its objectives. This may include, with the consent of the FCA, granting a firm's application for variation of Part 4A permission when it wishes to wind down (run off) its business activities and cease to carry on new business as a result of no longer being able to satisfy the threshold conditions.
- [C
PRA]
- (2) The PRA may refuse an application 55B(3) of the Act if it considers that it is desirable to do so in order to advance any of its objectives.
- 6.3.29 G In determining whether the firm satisfies and continues to satisfy the *threshold conditions*, the FSA regulator concerned will consider whether the firm is ready, willing and organised to comply with the *regulatory requirements* regulatory requirements it will be subject to if the application requested ~~variation of Part IV permission~~ is granted.
- [FCA/
PRA]
- 6.3.30 G The ~~FSA will also consider~~ the specific requirements that apply to certain types of activity will also need to be considered as these may not allow certain combinations of activity.
- [FCA/
PRA]
- 6.3.31 G In considering whether to grant (or consent to, as the case may be) a firm's application to vary its ~~Part IV permission~~ Part 4A permission or impose or vary a requirement, the FSA regulator concerned will also have regard, under section ~~49(1)~~ 55R(1) of the Act (Persons connected with an applicant), to any person appearing to be, or likely to be, in a relationship with the firm which is relevant. The *Financial Groups Directive Regulations* make special consultation provisions where the FSA regulator is exercising its functions under Part ~~IV~~ 4A of the Act (Permission to carry on regulated activities) for the purposes of carrying on supplementary supervision. Broadly, where ~~the FSA a regulator~~, in the course of carrying on supplementary supervision, is considering varying the ~~Part IV permission~~ Part 4A permission of a person who is a member of a group which is a *financial conglomerate*, the consultation provisions in section ~~49(2)~~ 55R(2) of the Act are disapplied. In their place, the regulations impose special obligations, linked to the *Financial Groups Directive*, to obtain the consent of the relevant competent authorities, to consult those authorities and to consult with the group itself.

The FSA's regulator's powers in respect of application for variation of Part IV permission

- 6.3.32 G The ~~FSA's power to vary a Part IV permission after it receives an application from a firm extends to including in the Part IV permission as varied any provision that could be included as though a fresh permission was being given in response to an application under section 40 of the Act (Application for permission). Under sections 42 (Giving permission) and 43 of the Act (Imposition of requirements), the FSA may:~~
- (1) ~~incorporate in the description of a regulated activity a limitation (for example, as to the circumstance in which a regulated activity may or~~

~~may not be carried on); or~~

- (2) ~~specify a narrower or wider description of *regulated activity* than the *firm* applied for in the application for variation of *Part IV permission* (see *SUP 3.9.29G(3)* for restrictions on *insurers*); or~~
- (3) ~~require the *firm* not to take a specified action (for example, not to hold *client money*); or~~
- (4) ~~require the *firm* to take a specified action (for example, to submit financial returns more frequently than normal). [deleted]~~

6.3.32 G The *FCA*'s power to vary a *Part 4A permission* after it receives an application from a *firm* extends to including in the *Part 4A permission* as varied any provision that could be included as though a fresh *permission* was being given in response to an application under section 55A of the *Act* (Application for permission). Under section 55E of the *Act* (Giving permission: the *FCA*) the *FCA* may:

- (1) incorporate in the description of a *regulated activity* such *limitations* (for example, as to the circumstance in which a *regulated activity* may or may not be carried on) as it considers appropriate; or
- (2) specify a narrower or wider description of *regulated activity* than that to which the application relates; or
- (3) give permission for the carrying on of a *regulated activity* which is not included among those to which the application relates and is not a *PRA-regulated activity*.

6.3.32 G Thus, when determining an application for variation of *Part 4A permission*, the *FCA* can, include new *limitations* and vary existing *limitations*, either on application from the *firm* (for example, the *customer* categories with which a *firm* may carry on a specified activity), or if considered appropriate by the *FCA* under section 55E(5) of the *Act*.

6.3.32 G If a *firm* has applied (whether to the *FCA* or the *PRA*) for the variation of a *Part 4A permission*, the *FCA* has the power to impose on that person such *requirements*, taking effect on or after the variation of permission, as the *FCA* considers appropriate.

6.3.33 G ~~Thus, when determining an application for variation of *Part IV permission*, the *FCA* can, therefore:~~

- (1) ~~include new *limitations* and vary existing *limitations*, either on application from the *firm* (for example, the *customer* categories with which a *firm* may carry on a specified activity), or if considered appropriate by the *FSA* under section 42(7)(a) of the *Act*; or~~
- (2) ~~include any new *requirements* and vary existing *requirements*, either on application from the *firm* or where considered appropriate by the~~

FSA under section 43 of the *Act* to ensure that the *firm* satisfies and continues to satisfy the *threshold conditions*. [deleted]

6.3.33 G The PRA's powers to vary a Part 4A permission after it receives an application from a firm extends, subject to the consent of the FCA, to including in the Part 4A permission as varied any provision that could be included as though a fresh permission was being given in response to an application under section 55A of the Act (Application for permission). Under section 55F of the Act (Giving permission: the PRA), the PRA may:
A
[PRA]

- (1) incorporate in the description of a regulated activity such limitations (for example, as to the circumstance in which a regulated activity may or may not be carried on) as it considers appropriate; or
- (2) specify a narrower or wider description of regulated activity than that to which the application relates; or
- (3) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.

6.3.33 G Thus, when determining an application for variation of Part 4A permission, the PRA can include new limitations and vary existing limitations, either on application from the firm (for example, the customer categories with which a firm may carry on a specified activity), or if considered appropriate by the PRA under section 55F(4) of the Act.
B
[PRA]

6.3.33 C If a firm has applied to the PRA for the variation of a Part 4A permission, the PRA has the power to impose on that person such requirements, taking effect on or after the giving or variation of the permission, as the PRA considers appropriate.
[PRA]

6.3.34 G If limitations are varied or imposed or requirements are imposed by the FSA relevant regulator which were not included in the firm's application for variation of Part 4A permission, the FSA relevant regulator will be required to issue the firm with a warning notice and decision notice (see SUP 6.3.39G).
[FCA/
PRA]

6.3.34 G Where a firm has made an application to the PRA for the variation of its Part 4A permission and requirements are imposed by the FCA which were not included in the firm's application, the FCA will be required to issue the firm with a warning notice and decision notice (see SUP 6.3.39G).
A
[FCA/
PRA]

How long will an application take?

6.3.35 G Under section 52(1) 55V(1) of the Act (Determination of applications), the FSA relevant regulator has six months to consider a completed application from the date of receipt.
[FCA/
PRA]

6.3.36 G If the FSA relevant regulator receives an application which is incomplete (that is, if information or a document required as part of the application is not provided), section 52(2) 55V(2) of the Act requires the FSA relevant regulator to determine that incomplete application within 12 months of the initial receipt
[FCA/
PRA]

of the application.

- 6.3.36 A [FCA/PRA] G Where the application cannot be determined by the PRA without the consent of the FCA, s55V(3) of the Act requires that the FCA's decision must also be made within the period required in SUP 6.3.35G or SUP 6.3.36G as appropriate.
- 6.3.37 [FCA/PRA] G Within these time limits, however, the length of the process will relate directly to the complexity of the ~~variation requested~~ application. ~~The FSA [To be inserted] publishes standard response times on its website at www.fsa.gov.uk [insert new website link] setting out how long the application process is expected to take in practice. From time to time, the FSA also publishes its performance against these times.~~
- 6.3.37 A [FCA] G The FCA publishes standard times on its website at [web address to be confirmed] setting out how long the application process is expected to take. From time to time, the FCA also publishes its performance against these times.
- 6.3.38 [FCA/PRA] G At any time after receiving an application and before determining it, the ~~FSA~~ relevant regulator may require the applicant to provide additional information or documents. The circumstances of each application will dictate what additional information or procedures are appropriate.

How will the ~~FSA~~ relevant regulator make the decision?

- 6.3.39 [FCA/PRA] G A decision to grant an application ~~for variation of Part IV permission, as applied for,~~ will be taken by appropriately experienced staff at the FSA relevant regulator staff. However, if the ~~FSA~~ staff dealing with the application recommend that a *firm's* application for variation of ~~Part IV permission~~ Part 4A permission be either refused or granted subject to *limitations* or *requirements* or a narrower description of *regulated activities* than applied for, the decision will ~~be taken by either the RDC or executive procedures~~ be subject to the regulator's formal decision making process.
- 6.3.40 [FCA] G ~~DEPP~~ gives guidance on the ~~FSA's~~ FCA's decision making procedures including the procedures it will follow if it proposes to refuse an application for variation of ~~Part IV permission~~ Part 4A permission or for imposition or variation of a requirement either in whole or in part (for example, an application granted by the ~~FSA~~ FCA but subject to *limitations* or *requirements* not applied for).

Commencing new regulated activities

- 6.3.41 [FCA/PRA] G If the variation of ~~Part IV permission~~ Part 4A permission is given, the ~~FSA~~ relevant regulator will expect a *firm* to commence a new *regulated activity* in accordance with its business plan (revised as necessary to take account of changes during the application process) or scheme of operations for an *insurer*. *Firms* should take this into consideration when determining when to make an application to the ~~FSA~~ relevant regulator.

- 6.3.42 G (1) *Firms* should be aware that the *FSA appropriate regulator* may exercise its *own-initiative variation power* to vary or cancel their *Part IV permission Part 4A permission* if they do not (see *EG-8 section 55J* of the *Act* (*Variation and or cancellation on initiative of regulator of permission on the FSA's own initiative and intervention against incoming firms*)):
- [FCA/
PRA]
- (a) commence a *regulated activity* for which they have *Part IV permission Part 4A permission* within a period of at least 12 months from the date of being given; or
- (b) carry on a *regulated activity* for which they have *Part IV permission Part 4A permission* for a period of at least 12 months (irrespective of the date of grant).
- (1A) The *FSA appropriate regulator* may exercise its *own-initiative variation power* to cancel an *investment firm's Part IV permission Part 4A permission* if the *investment firm* has provided or performed no *investment services and activities* at any time during the period of six months ending with the day on which the *warning notice* under section 54(1) 55Z(1) of the *Act* is given (see *EG 8*).
- [Note: article 8(a) of *MiFID*]
- (2) If the *FSA appropriate regulator* considers that such a variation or cancellation of the *firm's Part IV permission Part 4A permission* is appropriate, it will discuss the proposed action with the *firm* and its reasons for not commencing or carrying on the *regulated activities* concerned.
- 6.3.43 G When a *firm* commences new *regulated activities* following a variation of a *Part IV permission Part 4A permission*, it should have particular regard to the requirements of *Principle 11* (Relations with regulators) (see *SUP 15.3.8G(1)(c)*).
- [FCA/
PRA]

6.4 Applications for cancellation of permission

- 6.4.1 G Under section 44(2) of the *Act* (*Variation etc. at request of authorised person*), if an *authorised person* with a *Part IV permission* applies to the *FSA*, the *FSA* may cancel that *permission*. Cancellation applies to a *firm's* entire *Part IV permission*, that is to every activity and every *specified investment* and not to the individual elements such as *specified investments*. Changes to the individual elements of a *permission* would require a variation. [deleted]
- 6.4.1A G Under section 55H(3) of the *Act* (*Variation by FCA at request of authorised person*), if an *FCA-authorised person* applies to the *FCA*, the *FCA* may cancel its *permission*. Cancellation applies to a *firm's* entire *Part 4A permission*, that is to every activity and every *specified investment* and not to the individual elements such as *specified investments*. Changes to the individual elements of
- [FCA]

a permission would require a variation.

- 6.4.1B [PRA] G Under section 55I(2) of the Act (Variation by PRA at request of authorised person), if a PRA-*authorised person* applies to the PRA, the PRA may cancel its permission. Cancellation applies to a firm's entire Part 4A permission, that is to every activity and every specified investment and not to the individual elements such as specified investments. Changes to the individual elements of a permission would require a variation.
- 6.4.2 G Under section 44(3) of the Act, the FSA may refuse an application from a firm to cancel its Part IV permission if it appears that it is desirable for the application to be refused in order to meet any of the FSA's regulatory objectives.
- (1) [deleted]
- (2) [deleted]
- 6.4.2A [FCA] G Under section 55H(4) of the Act, the FCA may refuse an application from a firm to cancel its Part 4A permission if it considers that it is desirable to do so in order to advance any of its operational objectives.
- 6.4.2B [PRA] G Under section 55I(4) of the Act, the PRA may refuse an application from a firm to cancel its Part 4A permission if it appears that it is desirable to do so in order to advance any of its objectives.
- 6.4.3 [FCA/PRA] G (1) A firm may apply to the FSA relevant regulator to cancel its Part IV 4A permission before it has ceased carrying on all regulated activities. However, where a firm makes a formal application for cancellation of its permission when it has not yet ceased carrying on regulated activities, the FSA relevant regulator will expect the firm:
- ...
- (2) Firms should note, however, that the FSA relevant regulator will not grant an application for cancellation of Part IV permission Part 4A permission until the firm can demonstrate that it has ceased carrying on all regulated activities (SUP 6.4.19G).
- (3) The FSA relevant regulator may apply additional procedures or require additional information, as if the firm had entered into a long term wind down of business (see SUP 6 Annex 4), if it considers it appropriate to the circumstances of the firm.
- 6.4.4 [FCA/PRA] G Additional guidance for a firm carrying on insurance business, accepting deposits, operating a dormant account fund or which holds client money or customer's assets is given in SUP 6 Annex 4. As noted in SUP 6.2.9G, it will usually be appropriate for a firm to apply for variation of its ~~Part IV permission~~ Part 4A permission and/or the imposition, variation or cancellation of a requirement while winding down (running off) its regulated activities and before applying to cancel its ~~Part IV permission~~ Part 4A permission.

The application for cancellation of permission

- 6.4.5 D (1) A *firm* other than a *credit union* wishing to cancel its *Part IV 4A permission*, must apply online at ~~www.fsa.gov.uk~~ [web address to be confirmed] using the form specified on the *FSA's* ONA system.
- [FCA/
PRA]
- (2) ~~A *credit union* wishing to cancel its *Part IV permission* must apply using the form in SUP 6 Annex 6D and submit its application in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification). The application must be addressed for the attention of the Cancellations Team at the *FSA*.~~
- (a) ~~[deleted]~~
- (b) ~~[deleted]~~
- (3) ~~[deleted]~~
- (4) Until the application has been determined, a *firm* which submits an application for cancellation of ~~*Part IV permission*~~ *Part 4A permission* must inform the *FSA* relevant regulator of any significant change to the information given in the application immediately it becomes aware of the change.
- (5) Where a *firm* is obliged to submit any form, notice or application online under (1), if the ~~*FSA's* information technology ONA systems fails~~ and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a *firm* must submit any form, notice or application by using the form in SUP 6 Annex 6D and submitting it in the way set out in SUP 15.7.4R to SUP 15.7.9 G (Form and method of notification).
- 6.4.5A G (1) If the ~~*FSA's* information technology ONA systems fails~~ and online submission is unavailable for 24 hours or more, the *FSA* relevant regulator will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in SUP 6.4.5D(5) and SUP 15.7.4R to SUP 15.7.9G (Form and method of notification) should be used.
- [FCA/
PRA]
- ...
- 6.4.5B G A *credit union* wishing to cancel its *Part 4A permission* must apply using the form in SUP 6 Annex 6D and submit its application in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification). The application must be addressed for the attention of the [to be inserted] at the *PRA*.
- [PRA]
- 6.4.6 G (1) In addition to applying for cancellation of ~~*Part IV permission*~~ *Part 4A permission* in accordance with SUP 6.4.5D, a *firm* may discuss prospective cancellations with its ~~usual~~ supervisory contact ~~at the *FSA*~~ at the appropriate regulator. Alternatively a *firm* can contact the ~~Firms~~
- [FCA/
PRA]

~~Contact Centre on 0845 606 9966~~[to be inserted].

- (2) To contact the ~~Cancellations Team~~ [to be inserted]:
- (a) write to: ~~Cancellations Team, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS~~ [to be inserted]; or
- (b) email ~~cancellation.team@fsa.gov.uk~~ [to be inserted]
- (3) If a *firm* which has applied for cancellation decides to remain authorised it should inform the *FSA relevant regulator* immediately using one of the methods in SUP 6.4.6 G(2).

6.4.7 G When an application is received, the *FSA relevant regulator* will send the *firm* a written acknowledgement. The *firm* will be required to provide information which, in the opinion of the *FSA relevant regulator*, is necessary for it to determine whether to grant or refuse the application for cancellation of ~~Part IV~~ 4A permission. ~~The Cancellations Team will work with the firm's usual supervisory contact at the FSA during this process.~~

[FCA/
PRA]

Information to be supplied to the *FSA relevant regulator* as part of the application for cancellation of permission

6.4.8 G The information which the *FSA relevant regulator* may request on the circumstances of the application for cancellation and the confirmations which the *FSA relevant regulator* may require a *firm* to provide will differ according to the nature of the *firm* and the activities it has ~~Part IV permission~~ Part 4A permission to carry on.

[FCA/
PRA]

6.4.9 G A *firm* will be expected to demonstrate to the *FSA relevant regulator* that it has ceased carrying on *regulated activities*. The *FSA relevant regulator* may require, as part of the application, a report from the *firm* that includes, but is not limited to, the confirmations referred to in SUP 6.4.12G (as appropriate to the *firm's* business). The *FSA relevant regulator* may also require additional information to be submitted with the report including, in some cases, confirmation or verification from a professional adviser on certain matters to supplement the report (see SUP 6.4.15G).

[FCA/
PRA]

- 6.4.10 G (1) If a *firm* is subject to the complaints rules in DISP, the *FSA FCA* may request confirmation from the *firm* that there are no unresolved, unsatisfied or undischarged complaints against the *firm* from a *customer* of the *firm*.
- (2) If there are unresolved or undischarged complaints against a *firm* from a *customer* of the *firm*, the *FSA FCA* may request confirmation, as appropriate, of the steps (if any) which have been taken under the *firm's* complaints procedures and the amount of compensation claimed. The *FSA FCA* may also request an explanation of the arrangements made for the future consideration of such complaints.

[FCA]

- 6.4.11 G If the *firm* is carrying on *designated investment business* with *retail clients*, the FSA FCA may request confirmation that the *firm* has written, or intends to write, to all *retail clients* with, or for whom, the *firm* has conducted *regulated activities* within a certain period.

[FCA]

Confirmations and resolutions

- 6.4.12 G The FSA relevant regulator will usually require the report in SUP 6.4.9G to be signed by a *director* or other officer with authority to bind the *firm*. It may include confirmations from the *firm* that, in relation to business carried on under its ~~Part IV permission~~ Part 4A permission, it has:

[FCA/
PRA]

...

- 6.4.13 G The FSA relevant regulator may also require a resolution from the *firm's governing body*, for example to support the application for cancellation of *permission*, expressed to be irrevocable, and to give the signatory the authority to sign the formal report to the FSA relevant regulator.

[FCA/
PRA]

- 6.4.14 G Under section ~~397~~ 398 of the *Act* (~~Misleading statements and practices~~ FCA or PRA: residual cases), it is an *offence*, in purported compliance with a requirement imposed by or under the *Act* (including the directions in SUP 6.4.5D), for a *person* to knowingly or recklessly give the FSA regulator information that is false or misleading. If necessary, a *firm* should take appropriate professional advice when supplying information required by the FSA regulator(s). An *insurer*, for example, may ask an *actuary* to check assumptions in respect of future *claims* made under *contracts of insurance*.

[FCA/
PRA]

Reports from professionals

- 6.4.15 G The FSA relevant regulator may require additional information, including professional advice, to supplement or support the report in SUP 6.4.9G where it considers this appropriate. Examples of reports that may be requested by the FSA relevant regulator include, but are not limited to those detailed in SUP 6.4.16G.

[FCA/
PRA]

...

- 6.4.17 G If a *firm* is transferring its business, the FSA relevant regulator may require a professional opinion in respect of certain aspects of the transfer. For example, the FSA relevant regulator may require a legal opinion on the validity of arrangements to transfer *regulated activities*, *client money*, *client deposits*, *custody assets* or any other property belonging to *clients*, to another *authorised person*. Alternatively, an auditor or *reporting accountant* may be requested to verify that a transfer has been properly accounted for in the *firm's* books and records. Transfers of *insurance* and *banking business* are subject to statutory requirements (see SUP 18).

[FCA/
PRA]

Approved persons

- 6.4.18 G A *firm* which is applying for cancellation of ~~Part IV permission~~ Part 4A

[FCA/
PRA] *permission* and which is not otherwise *authorised* by, or under, the *Act* should, at the same time, comply with SUP 10.13.6 R and notify the *FSA appropriate regulator* of persons ceasing to perform *controlled functions* specified by that *regulator*. These forms should give the effective date of withdrawal, if known (see SUP 10 (Approved persons)).

When will the *FSA relevant regulator* grant an application for cancellation of permission?

6.4.19 G The *FSA relevant regulator* will usually not cancel a *firm's Part IV permission Part 4A permission* until the *firm* can demonstrate that, in relation to business carried on under that *permission*, it has, as appropriate:

[FCA/
PRA]

...

6.4.20 G If it is not possible for a *firm* to demonstrate a relevant matter referred to in SUP 6.4.19G, for example, depositors are uncontactable, the *firm* will be expected to have satisfied the *FSA relevant regulator* that it has made adequate provisions for discharging any liabilities to *clients* which do not involve the *firm* carrying on *regulated activities*.

[FCA/
PRA]

6.4.21 G Before the *FSA relevant regulator* cancels a *firm's Part IV permission Part 4A permission*, the *firm* will be expected to be able to demonstrate that it has ceased or transferred all *regulated activities* under that *permission*. For example, the *firm* may be asked to provide evidence that a transfer of business (including, where relevant, any *client money*, *customer* assets or *deposits* or insurance liabilities) is complete. As noted in SUP 6.4.9G, the *FSA relevant regulator* may require the *firm* to confirm this by providing a report, in a form specified by the *FSA relevant regulator*:

[FCA/
PRA]

- (1) as part of the application for cancellation of *permission*, if the *firm* has ceased carrying on all *regulated activities* under its *Part IV permission Part 4A permission* at the time of application (see SUP 6.4.9G); or
- (2) after the application but before its determination, if the *firm* has not ceased carrying on *regulated activities* under its *Part IV permission Part 4A permission* at the time of application.

6.4.22 G In deciding whether to cancel a *firm's Part IV permission Part 4A permission*, the *FSA relevant regulator* will take into account all relevant factors in relation to business carried on under that *permission*, including whether:

[FCA/
PRA]

...

- (5) the *FSA relevant regulator* or another regulator has commenced an investigation against the *firm* or continuing enforcement action against the *firm*;
- (6) there are any matters affecting the *firm* which should be investigated before a decision on whether the *firm* should have its *Part IV permission Part 4A permission* cancelled by the *FSA relevant regulator*

or be disciplined;

...

(8) the *firm* has settled all its debts to the *FSA appropriate regulator*; and

...

The ~~FSA's~~ FCA and the PRA enforcement and investigation powers against a former authorised person

6.4.23 G If the ~~FSA has granted~~ an application for cancellation of a *firm's Part IV permission* Part 4A permission has been granted and withdrawn a *firm's* status as an *authorised person* has been withdrawn (see *SUP* 6.5) it will ~~retain~~ remain subject to certain investigative and enforcement powers ~~in relation to the firm~~ as a former *authorised person*. These include:

[FCA/
PRA]

...

6.4.24 G However, ~~the FSA will not be able to use~~ the following powers may not be used against former *authorised persons*:

[FCA/
PRA]

...

(2) the power to require *firms* to make restitution under section 384 of the *Act* (Power of ~~the FSA~~ FCA or PRA to require restitution).

6.4.25 G Consequently, the ~~FSA~~ relevant regulator considers that it will have good reason not to grant a *firm's* application for cancellation of *permission* where:

[FCA/
PRA]

(1) ~~if~~ the FCA and/or the PRA proposes to exercise any of the powers described in *SUP* 6.4.24G; or

(2) ~~if~~ the FCA and/or the PRA has already begun disciplinary and/or restitution proceedings against the *firm* by exercising either or both of these powers against the *firm*.

6.4.26 G The ~~FSA's~~ FCA's use of those powers is outlined in *DEPP* 6 (Penalties).

[FCA]

How long will an application take?

6.4.27 G (1) Under section ~~52(1)~~ 55V(1) of the *Act* (Determination of applications), the ~~FSA~~ relevant regulator has six months to consider a completed application.

[FCA/
PRA]

(2) If the ~~FSA~~ relevant regulator receives an application which is incomplete, that is, where information or a *document* required as part

of the application is not provided, section ~~52(2)~~ 55V(2) of the *Act* requires the *FSA* relevant regulator to determine the incomplete application within 12 months of the initial receipt of the application.

- (3) Within these time limits, however, the length of the process will relate directly to the complexity of ~~variation~~ cancellation requested and whether the *firm* has fully wound down (run off) its activities at the time it applies. ~~The *FSA* publishes standard response times on its website setting out how long the application process is expected to take in practice. From time to time, the *FSA* also publishes its performance against these times.~~

6.4.27 G The *FCA* publishes standard response times on its website setting out how long the application process is expected to take in practice. From time to time, the *FCA* also publishes its performance against these times.
A
[FCA]

How will ~~FSA~~ the relevant regulator make the decision?

6.4.28 G A decision to grant an application for cancellation of *permission* will be taken by appropriately experienced ~~*FSA*~~ staff at the relevant regulator. Where, however, the ~~*FSA*~~ staff dealing with the application recommend that a *firm's* application for cancellation of ~~*Part IV permission*~~ *Part 4A permission* be refused, the decision will be ~~taken by the *RDC* if the applicant makes representations to the *FSA*. If there are no representations, the decision will be made under *executive procedures*~~ be subject to the regulator's formal decision making process.
[FCA/
PRA]

6.4.29 G See *DEPP* for *guidance* on the ~~*FSA's*~~ *FCA's* decision making procedures, including the procedures it will follow if it proposes to refuse an application for cancellation of ~~*Part IV permission*~~ *Part 4A permission*.
[FCA]

6.5 Ending authorisation

6.5.1 G Under section 33(2) of the *Act* (Withdrawal of authorisation ~~by the *FSA*~~), if the ~~*FSA*~~ appropriate regulator cancels a *firm's* ~~*Part IV permission*~~ *Part 4A permission*, and as a result there is no *regulated activity* for which the *firm* has *permission*, the ~~*FSA*~~ regulator authorising that *firm* is required to give a *direction* withdrawing the *firm's* status as an *authorised person*.
[FCA/
PRA]

6.5.2 G ~~If the *FSA* concludes that it should grant a *firm's* application for cancellation of *permission* and end its *authorisation*, the *FSA* will:~~

- (1) ~~cancel the *firm's* *Part IV permission* under section 44(2) of the *Act*;~~
- (2) ~~withdraw the *firm's* *authorised* status under section 33(2) of the *Act* by giving the *firm* a *direction* in writing; and~~
- (3) ~~update the *firm's* entry in the *FSA register* to show it has ceased to be *authorised*. [deleted]~~

- 6.5.2A G If the FCA concludes that it should grant an FCA-*authorised person's* application for cancellation of *permission* and end its *authorisation*, the FCA will:
 [FCA]
- (1) cancel the *firm's Part 4A permission* under section 55H(3) of the *Act*;
 - (2) withdraw the *firm's authorised* status under section 33(2) of the *Act* by giving the *firm* a direction in writing; and
 - (3) update the *firm's* entry in the [insert] to show it has ceased to be *authorised*.
- 6.5.2B G If the PRA concludes that it should grant a PRA-*authorised person's* application for cancellation of *permission* and end its *authorisation*, the PRA will:
 [PRA]
- (1) cancel the *firm's Part 4A permission* under section 55I(2) of the *Act*;
 - (2) withdraw the *firm's authorised* status under section 33(2) of the *Act* by giving the *firm* a direction in writing; and
 - (3) contact the FCA and request that it update the *firm's* entry in the [insert] to show it has ceased to be *authorised*.

SUP 6 Annex 1, 2 and 3 are deleted in their entirety. The deleted text is not shown.

6 Annex 4 Additional guidance for a firm winding down (running off) its business

6 Annex 4.1G
 [FCA/
 PRA]

1.	If a <i>firm</i> has Part IV 4A <i>permission</i> which enables it to hold <i>client money</i> or to carry on <i>regulated activities</i> including:
...	
it may require a long period (usually in excess of six months) in which to wind down (run off) its business. In these circumstances, it will usually be appropriate for the <i>firm</i> to apply for a variation of Part IV permission <i>Part 4A permission</i> before commencing the wind down.	
2.	A <i>firm</i> that believes that it may need to apply for a variation of Part IV permission <i>Part 4A permission</i> as a first step towards cancellation of its <i>permission</i> should discuss its plans with its usual supervisory contact at the FSA at the relevant regulator
3.	If appropriate, in the interests of its regulatory <i>statutory objectives</i> (limited to the operational objectives in the case of the <i>FCA</i>), the FSA <i>appropriate regulator</i> will require details of the <i>firm's</i> plans and will discuss them with the <i>firm</i> and monitor the winding down or transfer of the <i>firm's</i> business. During the period in which it is winding down, a <i>firm</i> will also be required to notify the FSA of any material changes to the information provided such

	as, for example, receipt of new complaints and changes to plans.
4.	If, after its Part IV permission <u>Part 4A permission</u> has been varied, a <i>firm</i> has wound down its business, complied with any <i>requirements</i> imposed by the FSA and ceased to carry on <i>regulated activities</i> (or expects to do so within the next six months), it should then make an application for cancellation of its Part IV permission <u>Part 4A permission</u> (see SUP 6.4 (Applications for cancellation of permission)).

Use of own-initiative powers

5.	If, for example, the FSA FCA or the PRA has concerns relating to any of its the regulatory <u>statutory objectives</u> (limited to the operational objectives in the case of the <i>FCA</i>), it may, however, use its own-initiative power <u>own-initiative variation power</u> under section 45 of the Act (Variation etc. on the Authority's own initiative) (see SUP 7 (Individual requirements) and EG 8 (Variation and cancellation of permission on the <i>FSA</i> 's own initiative and intervention against incoming firms)), to vary the Part IV permission <u>Part 4A permission</u> of a <i>firm</i> which is winding down or transferring its <i>regulated activities</i> .
5A.	If, for example, the <u>appropriate regulator</u> has concerns relating to any of its <u>statutory objectives</u> (limited to the operational objectives in the case of the <i>FCA</i>), it may use its <u>own-initiative requirements power</u> to impose on a <i>firm</i> that is winding down or transferring its <i>regulated activities</i> , any <u>requirement</u> , or vary or cancel a <u>requirement</u> imposed by it on that <i>firm</i> .

Reporting requirements: general

6.	If a <i>firm</i> is winding down (running-off) its business, the routine reporting requirements in SUP 16 (Reporting requirements) will apply unless the <i>firm</i> is granted a waiver. In addition, a <i>firm</i> may be asked to submit additional reports, for example, to enable the FSA <u>appropriate regulator</u> to monitor the wind down.
----	--

6 Annex 4.2G [FCA/ PRA]

1.	If a <i>firm</i> makes an application in accordance with SUP 6 to vary its Part IV permission to effect the winding down of <i>regulated activities</i> which it is carrying on including the repayment of <i>client money</i> , or the return of <i>client deposits</i> , <i>custody assets</i> or any other property belonging to <i>clients</i> , the FSA <u>appropriate regulator</u> will expect it to have formal plans to ensure that:
...	
2.	A firm must comply with CASS 4.3.99R, CASS 5.5.80R and CASS 7.2.15R (Client money: discharge of fiduciary duty) and CASS 4.3.104R and CASS 7.2.19R (Allocated but unclaimed client money) if it is ceasing to hold client money. A firm must also cease to hold or control custody assets in accordance with instructions received from clients (including instructions set out in an agreement entered into in accordance with CASS 2.3.2R

	(Custody: client agreement) and COBS 6.1.7R (Information concerning safeguarding of designated investments belonging to clients and client money). These rules apply to both repayment and transfer to a third party. [deleted]
--	--

6
Annex
4.2AG
[FCA]

1.	<u>A firm must comply with CASS 4.3.99R, CASS 5.5.80R and CASS 7.2.15R (Client money: discharge of fiduciary duty) and CASS 4.3.104R and CASS 7.2.19R (Allocated but unclaimed client money) if it is ceasing to hold client money. A firm must also cease to hold or control custody assets in accordance with instructions received from clients (including instructions set out in an agreement entered into in accordance with CASS 2.3.2R (Custody: client agreement) and COBS 6.1.7R (Information concerning safeguarding of designated investments belonging to clients and client money) . These rules apply to both repayment and transfer to a third party.</u>
----	---

6
Annex
4.3G
[FCA/
PRA]

1.	A firm carrying on insurance business which, ultimately, intends to cease insurance business completely, will first need to apply for a variation of its Part IV permission <u>Part 4A permission</u> while it is running off its business. The firm should apply for a variation of Part IV permission <u>Part 4A permission</u> to remove the activity of <i>effecting contracts of insurance</i> from its permission , thus restricting its activities to <i>carrying out insurance contracts</i> to enable it to run off its remaining insurance liabilities (see SUP 6.2.9G).
2.	Examples of variations of Part IV permission <u>Part 4A permission</u> which may be appropriate in the context of winding down insurance business include:
	(1) removing one or more <i>regulated activities</i> (for example, when a firm which has Part IV permission <u>Part 4A permission</u> to carry on insurance business enters into run-off, its Part IV permission <u>Part 4A permission</u> will need to be varied to remove the activity of <i>effecting contracts of insurance</i> in relation to new <i>contracts of insurance</i>); a new <i>contract of insurance</i> excludes contracts effected under a term of a subsisting <i>contract of insurance</i> . Thus the firm's permission will be restricted to <i>carrying out contracts of insurance</i> to enable it to run off its existing liabilities; or
	(2) imposing a <i>limitation on regulated activities</i> in a firm's Part IV permission or imposing a <i>requirement on the type of investments a firm holds to support its insurance liabilities</i> Part 4A permission .
2A.	<u>A firm may also have imposed on it a new requirement, or any existing requirement imposed on a firm may be varied or cancelled. In the context of winding down insurance business, it may for example be appropriate to impose a requirement on the type of investments a firm holds to support its insurance liabilities.</u>

3.	An insurer ceasing to effect contracts of insurance is required to submit a scheme of operations in accordance with SUP App 2 (Insurers: scheme of operations). The FSA PRA may require other information depending on the circumstances, for example an actuarial assessment of the firm's run-off.
...	
5.	An insurer should note that the FSA PRA will not cancel a firm's permission until all the firm's insurance liabilities have been discharged, including any potential insurance liabilities. A firm is, therefore, advised to submit an application for cancellation of its Part IV permission Part 4A permission when its run-off is completed.

**6
Annex
4.4G**
[FCA/
PRA]

1.	A firm making an application to vary or cancel its Part IV permission in accordance with SUP 6 which requires any approval from the Society of Lloyd's should apply to the Society for this in addition to applying to the FSA for the variation or cancellation relevant regulator.
2.	Where a firm has Part IV permission Part 4A permission to manage the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's then, if it wishes to vary its Part IV permission Part 4A permission to remove this regulated activity or to cancel its Part IV permission Part 4A permission completely, special procedures will apply.
3.	(1) As a first step, the firm should apply to the FSA relevant regulator for a variation of its Part IV permission Part 4A permission to limit the regulated activity, after the Lloyd's syndicates have been closed, to permit no new business. Once the syndicates have been closed, the firm's consent from the Society to manage syndicates will also lapse
	(2) After a period of one year from the date of closure of the Lloyd's syndicates the firm may apply to the FSA to vary its Part IV permission Part 4A permission, to remove the regulated activity or to cancel its Part IV permission Part 4A permission entirely, as appropriate. At this time, a firm's approval from the Society of Lloyd's as a managing agent will cease.
4.	Firms which wish to discuss these procedures in more detail should contact their usual appropriate supervisory contact at the FSA and the Society of Lloyd's, as appropriate.

**6
Annex
4.5G**
[FCA/

1.	As stated in SUP 6.2.9G, where a bank, or other firm with permission that includes accepting deposits, wishes to cancel its Part IV permission Part 4A permission, it will generally need to apply for a variation of that permission while it winds down its business.
----	--

PRA]

<p>2. When a firm is winding down its business activities, it may be appropriate to vary its <i>Part IV permission</i> by imposing:</p> <p>(1) vary its <i>Part 4A permission</i> by imposing a <i>limitation</i> that no new <i>deposits</i> will be accepted; or</p> <p>(2) vary its <i>Part 4A permission</i> by imposing a <i>limitation</i> on the purchasing of <i>investments</i> for its own account; or</p> <p>(3) impose on it <i>requirements</i> concerning solvency.</p>
<p>3. After a <i>bank</i> has discussed with the <i>FSA appropriate regulator</i> the type of variation of <i>Part IV permission</i> <i>Part 4A permission</i> and/or <i>requirement</i> the <i>bank</i> requires to wind down its business, it should make an application for variation of <i>Part IV permission</i> as directed in <i>SUP 6.3.15D</i> and follow the <i>guidance</i> and procedures in <i>SUP 6</i> as well as the additional procedures set out in this annex.</p>
<p>4. The <i>FSA</i> may vary the <i>firm's Part IV permission</i> to impose one or more of <u>As appropriate, one or more of the following may be imposed on a firm:</u></p> <p>...</p>
<p>5. The information concerning the circumstances of these applications for variation of <i>Part IV permission</i> and the confirmations a <i>firm</i> is required to give to the <i>FSA regulator(s)</i> concerned will differ according to the nature of the <i>bank</i> and its <i>Part IV permission</i> <i>Part 4A permission</i>. If appropriate, it may include, but will not necessarily be limited to:</p> <p>...</p>
<p>Dealing with residual deposits: general</p> <p>6. Where a <i>firm</i> has residual <i>deposits</i> which, for whatever reason, cannot be repaid, they may be protected by a number of different methods. The precise applicability of the courses to be followed depends upon the particular circumstances of the individual <i>firm</i>. The <i>FSA's</i> <i>appropriate regulator's</i> supervisory approach will be determined by the course of action taken.</p>
<p>Holding funds on trust</p> <p>7. In some circumstances, it may be appropriate for the <i>firm</i> to make an irrevocable transfer of funds, at least equal to the total of its <i>deposits</i>, to an independent <i>trustee</i> to be held on <i>trust</i> for the benefit of the depositors. Any such proposal should be discussed in advance with the <i>FSA appropriate regulator</i>. The amount of funds held on trust should at all times exceed the total of all <i>deposits</i>, in order to provide for contingencies. Trust account arrangements are appropriate only in respect of solvent institutions. The <i>guidance</i> in paragraph 13 of this section applies in most cases.</p>
<p>8.</p> <p>(2) The <i>trustee</i> should be an independent and appropriately qualified third party, nominated by the institution and acceptable to the <i>FSA appropriate regulator</i>.</p> <p>...</p> <p>(b) The <i>FSA appropriate regulator</i> should be consulted about, or pre-notified of, a potential change of trustee.</p> <p>(c) Trustees are responsible for fulfilling their obligations under the trust deed. In practice, the <i>FSA appropriate regulator</i> may wish to point out that certain factors need to be given consideration by the trustees and the institution (for example, the</p>

procedures for paying out to depositors).
9. The <i>FSA appropriate regulator</i> would require to see an opinion by the <i>firm's</i> legal advisers, confirming the validity and enforceability of the <i>trust</i> and in particular specifying the extent (if any) to which the trust arrangements may be set aside in future. The <i>FSA appropriate regulator</i> reserves the right to request sight of the proposed trust documentation itself.
...
11. The trustee should not deposit, or otherwise invest, trust funds except in segregated accounts with third-party authorised institutions.
... (2) Auditors' reports, from the trust's auditors, should subsequently be obtained at intervals to demonstrate that funds in the trust continue to be at least equal to the remaining liabilities to depositors and that repayments have been properly made. The <i>firm</i> retains the ultimate responsibility to provide information to the <i>FSA appropriate regulator</i> . (3) The <i>FSA appropriate regulator</i> may, however, require the inclusion of a clause in the trust deed requiring the trustee to provide such information as may be requested.
...

6 Variation of permission application form

Annex 5D

[FCA/
PRA]

- D This annex consists only of one or more forms. Forms are to be found through the following address:

Supervision forms - FSA/form_links.jsp#supAnc [\[web address to be inserted\]](#)

6 Cancellation of permission application form

Annex 6D

[FCA/
PRA]

- D This annex consists only of one or more forms. Forms are to be found through the following address:

Cancellation of permission application form - FSA/does/sup/cancellation_form.doe [\[web address to be inserted\]](#)

Appendix 6

Designation of changes to SUP 6

Appendix 6: Designation of changes to SUP 6

Handbook Provision	Designation
SUP 6.1.1	[FCA and PRA]
SUP 6.1.2	[FCA and PRA]
...	...
SUP 6.1.3A	[FCA and PRA]
SUP 6.1.4	[FCA and PRA]
SUP 6.1.5	[FCA and PRA]
SUP 6.1.6	[FCA]
SUP 6.2.1	[FCA and PRA]
SUP 6.2.2	[FCA and PRA]
...	
SUP 6.2.3A	[FCA]
SUP 6.2.3B	[FCA and PRA]
SUP 6.2.3C	[FCA]
SUP 6.2.3D	[PRA]
SUP 6.2.3E	[PRA]
SUP 6.2.4	[FCA and PRA]
SUP 6.2.4A	[FCA and PRA]
SUP 6.2.4B	[FCA and PRA]
SUP 6.2.5	[FCA and PRA]
SUP 6.2.6	[FCA and PRA]
SUP 6.2.7	[FCA and PRA]
SUP 6.2.8	[FCA and PRA]
SUP 6.2.9	[FCA and PRA]
SUP 6.2.10	[FCA and PRA]
SUP 6.2.10A	[FCA and PRA]
SUP 6.2.11	[FCA and PRA]
SUP 6.2.12	[FCA and PRA]
SUP 6.2.13	[FCA and PRA]
SUP 6.2.14	[FCA and PRA]
...	
SUP 6.3.1A	[FCA]

SUP 6.3.1B	[FCA and PRA]
SUP 6.3.1C	[PRA]
...	
SUP 6.3.2A	[FCA]
SUP 6.3.2B	[PRA]
SUP 6.3.2C	[FCA]
SUP 6.3.2D	[PRA]
SUP 6.3.3	[FCA and PRA]
SUP 6.3.4	[FCA and PRA]
SUP 6.3.5	[FCA and PRA]
SUP 6.3.6	[FCA and PRA]
SUP 6.3.7	[FCA and PRA]
SUP 6.3.8	[FCA and PRA]
...	
SUP 6.3.11	[FCA and PRA]
SUP 6.3.12	[FCA and PRA]
SUP 6.3.13	[FCA and PRA]
SUP 6.3.14	[PRA]
SUP 6.3.15	[FCA and PRA]
SUP 6.3.15A	[FCA and PRA]
SUP 6.3.15B	[PRA]
SUP 6.3.16	[FCA and PRA]
SUP 6.3.17	[FCA and PRA]
SUP 6.3.18	[FCA and PRA]
SUP 6.3.19	[FCA and PRA]
SUP 6.3.20	[FCA and PRA]
SUP 6.3.21	[FCA and PRA]
SUP 6.3.22	[FCA and PRA]
SUP 6.3.23	[FCA and PRA]
SUP 6.3.24	[FCA and PRA]
SUP 6.3.25	[FCA and PRA]
SUP 6.3.26	[FCA and PRA]
SUP 6.3.27	[FCA and PRA]
SUP 6.3.28	[FCA and PRA]

SUP 6.3.28A	[FCA]
SUP 6.3.28B	[FCA]
SUP 6.3.28C	[PRA]
SUP 6.3.29	[FCA and PRA]
SUP 6.3.30	[FCA and PRA]
SUP 6.3.31	[FCA and PRA]
...	
SUP 6.3.32A	[FCA]
SUP 6.3.32B	[FCA]
SUP 6.3.32C	[FCA and PRA]
...	
SUP 6.3.33A	[PRA]
SUP 6.3.33B	[PRA]
SUP 6.3.33C	[PRA]
SUP 6.3.34	[FCA and PRA]
SUP 6.3.34A	[FCA and PRA]
SUP 6.3.35	[FCA and PRA]
SUP 6.3.36	[FCA and PRA]
SUP 6.3.36A	[FCA and PRA]
SUP 6.3.37	[FCA and PRA]
SUP 6.3.37A	[FCA]
SUP 6.3.38	[FCA and PRA]
SUP 6.3.39	[FCA and PRA]
SUP 6.3.40	[FCA]
SUP 6.3.41	[FCA and PRA]
SUP 6.3.42	[FCA and PRA]
SUP 6.3.43	[FCA and PRA]
...	
SUP 6.4.1A	[FCA]
SUP 6.4.1B	[PRA]
...	
SUP 6.4.2A	[FCA]
SUP 6.4.2B	[PRA]
SUP 6.4.3	[FCA and PRA]

SUP 6.4.4	[FCA and PRA]
SUP 6.4.5	[FCA and PRA]
SUP 6.4.5A	[FCA and PRA]
SUP 6.4.5B	[PRA]
SUP 6.4.6	[FCA and PRA]
SUP 6.4.7	[FCA and PRA]
SUP 6.4.8	[FCA and PRA]
SUP 6.4.9	[FCA and PRA]
SUP 6.4.10	[FCA]
SUP 6.4.11	[FCA]
SUP 6.4.12	[FCA and PRA]
SUP 6.4.13	[FCA and PRA]
SUP 6.4.14	[FCA and PRA]
SUP 6.4.15	[FCA and PRA]
...	...
SUP 6.4.17	[FCA and PRA]
SUP 6.4.18	[FCA and PRA]
SUP 6.4.19	[FCA and PRA]
SUP 6.4.20	[FCA and PRA]
SUP 6.4.21	[FCA and PRA]
SUP 6.4.22	[FCA and PRA]
SUP 6.4.23	[FCA and PRA]
SUP 6.4.24	[FCA and PRA]
SUP 6.4.25	[FCA and PRA]
SUP 6.4.26	[FCA]
SUP 6.4.27	[FCA and PRA]
SUP 6.4.27A	[FCA]
SUP 6.4.28	[FCA and PRA]
SUP 6.4.29	[FCA]
SUP 6.5.1	[FCA and PRA]
...	
SUP 6.5.2A	[FCA]
SUP 6.5.2B	[PRA]
SUP 6 Annex 1	[FCA and PRA]

SUP 6 Annex 2	[FCA and PRA]
SUP 6 Annex 3	[FCA and PRA]
SUP 6 Annex 4.1	[FCA and PRA]
SUP 6 Annex 4.2	[FCA and PRA]
SUP 6 Annex 4.2A	[FCA]
SUP 6 Annex 4.3	[FCA and PRA]
SUP 6 Annex 4.4	[FCA and PRA]
SUP 6 Annex 4.5	[FCA and PRA]
SUP 6 Ann 5D	[FCA and PRA]
SUP 6 Ann 6D	[FCA and PRA]

Appendix 7

Changes to Chapter 8 of the Supervision manual (SUP 8)

**WAIVER AND MODIFICATION OF RULES LEGAL CUTOVER INSTRUMENT
2012**

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct 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 137A (The FCA’s general rules);
 - (2) section 137R (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Powers exercised by the Prudential Regulation Authority

- C. The Prudential Regulation 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 137E (The PRA’s general rules); and
 - (2) section 137R (General supplementary powers).
- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- E. This instrument comes into force on [*date*].

Amendments to the Handbook

- F. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- G. This instrument may be cited as the Waiver and Modification of Rules Legal Cutover Instrument 2012.

By order of the Board of the Financial Conduct Authority
[*date*]

By order of the Board of the Prudential Regulation Authority
[*date*]

Annex

Amendments to the Supervision manual (SUP)

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

8 Waiver and modification of rules

8.1 Application and purpose

8.1.1 R ~~This chapter applies to every:~~

- (1) ~~*firm or person* who is subject to *FSA rules* that wishes to apply for, consent to, or has been given a modification of or waiver of the *FSA's rules*;~~
- (2) ~~*person*, as respects a particular *AUT* or *ICVC*, who wishes to apply for, consent to, or has been given a modification of or waiver of the *rules in COLL*. [deleted]~~

8.1.1XA R This chapter applies to every:
[FCA]

- (1) *firm or person* who is subject to *FCA rules* that wishes to apply for, consent to, or has been given a modification of or waiver of the *FCA's rules*;
- (2) *person*, as respects a particular *AUT* or *ICVC*, who wishes to apply for, consent to, or has been given a modification of or waiver of the *rules in COLL*.

8.1.1XB R This chapter applies to every *firm* or *person* who is subject to *PRA rules* that
[PRA] wishes to apply for, consent to, or has been given a modification of or waiver of the *PRA's rules*.

8.1.1A G This chapter is relevant to an applicant for a ~~*Part IV permission*~~*Part 4A*
[FCA/ *permission*, as if that applicant were a *firm*. Where the chapter refers to ~~usual~~
PRA] *appropriate* supervisory contact, the applicant should read this as being the usual *supervisory* contact ~~in~~ at the *Permissions Department**appropriate*
regulator. Further, this chapter is relevant to a *person* who is subject to rules made by the ~~*FSA*~~*appropriate regulator* and where the chapter refers to a *firm*, this includes that person.

...

8.2 Introduction

Waivers under section 148 138A of the Act

8.2.1 [FCA/
PRA] G Under section ~~148~~ 138A of the *Act* (Modification or waiver of rules), the ~~FS4~~ appropriate regulator may, on the application or with the consent of a *firm*, direct that its *rules*:

- (1) are not to apply to the *firm*; or
- (2) are to apply to the *firm* with such modifications as may be specified.

8.2.1A [FCA/
PRA] G SUP 8.2.1G does not apply to:

- (1) rules made by either regulator under section 137M of the Act;
- (2) rules made by the FCA under sections 247 or 248 of the Act.

...

8.3 Applying for a waiver

Conditions for giving a waiver

8.3.1 [FCA/
PRA] G Under section ~~148(4)~~ 138A(4) of the *Act*, the ~~FS4~~ appropriate regulator may not give a *waiver* unless it is satisfied that:

- (1) ...
- (2) the waiver would not result in undue risk to persons whose interests the rules are intended to protect adversely affect the advancement of, in the case of the PRA, any of its objectives and, in the case of the FCA, any of its operational objectives.

...

Publication of waivers

...

8.3.2A [FCA] G The FCA must consult the PRA before publishing or deciding not to publish a waiver which relates to:

- (1) a PRA-authorised person, or
- (2) an authorised person who has as a member of its immediate group a PRA-authorised person,

unless the waiver relates to rules made by the FCA under sections 247 or 248 of the Act.

Form and method of application

- 8.3.3 [FCA/PRA] D A firm wishing to apply for a waiver must complete the application form in SUP 8 Annex 2D and submit it in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).
- (1) ~~A firm other than a credit union wishing to apply for a waiver must apply online at www.fsa.gov.uk using the form specified on the FSA's ONA system. [deleted]~~
- (2) ~~A credit union wishing to apply for a waiver must complete the application form in SUP 8 Annex 2D and submit it in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification). [deleted]~~
- (3) ~~Where a firm is obliged to submit an application online under (1), if the FSA's information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a firm must use the form in SUP 8 Annex 2D and submit it in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification). [deleted]~~
- ...
- 8.3.3A [FCA/PRA] G (1) ~~If the FSA's information technology systems fail and online submission is unavailable for 24 hours or more, the FSA will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in SUP 8.3.3D(3) and SUP 15.7.4R to SUP 15.7.9G (Form and method of notification) should be used. The appropriate regulator's preferred method of submission for waiver applications is by e-mail.~~
- (2) ~~Where SUP 8.3.3D(3) applies to a firm, GEN 1.3.2R (Emergency) does not apply. The form is available on the appropriate regulator's website (see [web addresses to be inserted]).~~
- 8.3.4 [FCA/PRA] G Before sending in a waiver application, a firm may find it helpful to discuss the application with its usual appropriate supervisory contact at the FSA. However, the firm should still ensure that all relevant information is included in the application.
- 8.3.4A FCA G Firms or persons other than PRA-authorised persons should send applications for waivers or applications for variations of waivers to the FCA.
- 8.3.4B [FCA/PRA] G PRA-authorised persons should send applications for waivers or applications for variations of waivers to:
- (1) the FCA in respect of rules in the FCA Handbook applicable to that PRA-authorised person; and

(2) the PRA in respect of rules in the PRA Handbook.

...

Giving a waiver with consent rather than on an application

8.3.10 [FCA/
PRA] G Under section ~~148(2)~~ 138A(1) of the *Act* the *FSA appropriate regulator* may give a *waiver* with the consent of a *firm*. This power may be used by the *FSA appropriate regulator* in exceptional circumstances where the *FSA appropriate regulator* considers that a *waiver* should apply to a number of *firms* (for example, where a *rule* unmodified may not meet the particular circumstances of a particular category of *firm*). In such cases the *FSA appropriate regulator* will inform the *firms* concerned that the *waiver* is available, either by contacting *firms* individually or by publishing details of the availability of the *waiver* on the *FSA's appropriate regulator's* website provided that the FCA must comply with SUP 8.3.2AG. The *firms* concerned will not have to make a formal application but will have to give their written consent for the *waiver* to apply.

Waiver of an evidential provision

8.3.11 [FCA/
PRA] G An application for a *waiver* of an *evidential provision* will normally be granted only if a breach of the underlying binding *rule* is actionable under section ~~150~~ 138D of the *Act*. Individual *guidance* would normally be a more appropriate response (see SUP 9 (Individual Guidance)) if there is no right of action.

...

8.3.13 [FCA/
PRA] G For an application for a *waiver* of the presumption of contravention of a binding *rule*, which is actionable under section ~~150~~ 138D of the *Act*, the *FSA appropriate regulator* would normally wish to be satisfied that the evidential *rule* is itself unduly burdensome or does not achieve the purpose of the *rule*.

8.3.13A [FCA/
PRA] G In accordance with section 138C(4) of the Act, in SUP 8.3.11G to 8.3.13G, a reference to a rule does not include a rule made under:

(1) section 137M of the Act; or

(2) section 192J of the Act.

8.4 Reliance on waivers

...

The effect of rule changes on waivers

8.4.2 [FCA/ PRA] G Substantive changes to the *rules* (this would not include simple editorial changes) in the *Handbook* may affect existing *waivers*, changing their

PRA] practical effect and creating a need for a change to the original *waiver*. The *FSA appropriate regulator* will consult on proposed *rule* changes. A *firm* should note proposed *rule* changes and discuss the impact on a *waiver* with its usual appropriate supervisory contact ~~at the FSA~~.

...

8.6 Publication of waivers

Requirement to publish

8.6.1 G The *FSA appropriate regulator* is required by sections ~~148(6)~~ 138B(1) and (2) of the *Act* to publish a *waiver* unless it is satisfied that it is inappropriate or unnecessary to do so. If the *FSA appropriate regulator* publishes a *waiver*, it will not publish details of why a *waiver* was required or any of the supporting information given in a *waiver* application.

[FCA/
PRA]

8.6.1A G The FCA must consult the PRA before publishing or deciding not to publish a waiver which relates to:

FCA

(1) a PRA-authorised person, or

(2) an authorised person who has as a member of its immediate group a PRA-authorised person,

unless the waiver relates to rules made by the FCA under sections 247 or 248 of the Act.

Matters for consideration

8.6.2 G When considering whether it is satisfied under section ~~148(6)~~138B(2), the *FSA appropriate regulator* is required by section ~~148(7)~~138B(3) of the *Act*:

[FCA/
PRA]

(1) to take into account whether the *waiver* relates to a *rule* contravention of which is actionable under section ~~150~~ 138D of the *Act* (Actions for damages); Schedule 5 identifies such *rules*;

(2) to consider whether its publication would prejudice, to an unreasonable degree, the commercial interests of the *firm* concerned, or any other member of its *immediate group*; ~~and~~

(3) to consider whether its publication would be contrary to an international obligation of the *United Kingdom* (for example, the confidentiality obligations in the *Single Market Directives*); ~~and~~

(4) to consider whether the publication of the waiver would be detrimental to the stability of the UK financial system.

...

8.8 Revoking waivers

8.8.1 G The ~~FSA~~ appropriate regulator may revoke a *waiver* at any time. In deciding
[FCA/
PRA] whether to revoke a *waiver*, the ~~FSA~~ appropriate regulator will consider
whether the conditions in section ~~148(4)~~138A(4) of the *Act* are no longer
satisfied (see SUP 8.3.1G), and whether the *waiver* is otherwise no longer
appropriate. ~~The FSA may revoke a waiver with immediate effect, if it
considers that this is necessary, for example, in order to prevent undue risk to
consumers.~~

...

SUP 8 Annex 1 is deleted in its entirety.

Appendix 8

Designation of changes to SUP 8

Appendix 8: Designation of changes to SUP 8

Handbook Provision	Designation
...	...
SUP 8.1.1XA	FCA
SUP 8.1.1XB	PRA
SUP 8.1.1.A	FCA and PRA
...	...
SUP 8.2.1	FCA and PRA
SUP 8.2.1A	FCA and PRA
...	...
SUP 8.3.1	FCA and PRA
...	...
SUP 8.3.2A	FCA
SUP 8.3.3	FCA and PRA
SUP 8.3.3A	FCA and PRA
SUP 8.3.4	FCA and PRA
SUP 8.3.4A	FCA
SUP 8.3.4B	FCA and PRA
...	...
SUP 8.3.10	FCA and PRA
SUP 8.3.11	FCA and PRA
...	...
SUP 8.3.13	FCA and PRA
SUP 8.3.13A	FCA and PRA
...	...

SUP 8.4.2	FCA and PRA
...	...
SUP 8.6.1	FCA and PRA
SUP 8.6.1A	FCA
SUP 8.6.2	FCA and PRA
...	...
SUP 8.8.1	FCA and PRA
...	...

Appendix 9

Changes to Chapter 11 of the Supervision manual (SUP 11)

CONTROLLERS AND CLOSE LINKS LEGAL CUTOVER INSTRUMENT 2012

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct 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 137A (The FCA’s general rules);
 - (2) section 137R (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purposes of section 138G (Rule-making instruments) of the Act.

Powers exercised by the Prudential Regulation Authority

- C. The Prudential Regulation 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 137E (The PRA’s general rules); and
 - (2) section 137R (General supplementary powers).
- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- E. This instrument comes into force on *[date]*.

Amendments to the Handbook

- F. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- G. This instrument may be cited as the Controllers and Close Links Legal Cutover Instrument 2012.

By order of the Board of the Financial Conduct Authority
[date]

By order of the Board of the Prudential Regulation Authority
[date]

Annex

Amendments to the Supervision manual (SUP)

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

11 Controllers and close links

...

11.2 Purpose

...

11.2.3 G As the approval of the *FSA appropriate regulator* is not required under the *Act* for a new *controller* of an *overseas firm*, the *notification rules* on such *firms* are less prescriptive than they are for *UK domestic firms*.
 [FCA/ Nevertheless, the *FSA appropriate regulator* still needs to monitor such an *overseas firm's* continuing satisfaction of the *threshold conditions*, which normally includes consideration of a *firm's* connection with any *person*, including its *controllers* and *parent undertakings* (see ~~COND~~ the effective supervision threshold conditions). The *FSA appropriate regulator* therefore needs to be notified of *controllers* and *parent undertakings* of *overseas firms*.
 PRA]

...

11.2.5 G Similarly, the *FSA appropriate regulator* needs to monitor a *firm's* continuing satisfaction of the effective supervision threshold conditions ~~3~~ (~~Close links~~) (in relation to threshold conditions for which the FCA is responsible, see *COND* 2.3), which requires that a *firm's close links* are not likely to prevent the *FSA's appropriate regulator's* effective supervision of that *firm*. Accordingly the *FSA appropriate regulator* needs to be notified of any changes in a *firm's close links*. This requirement is contained in *SUP* 11.9.
 [FCA/ PRA]

...

11.5 Notifications by firms

Joint notifications

...

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

11.5.10 G When an event occurs (for example, a *group* restructuring or a merger) as a
[FCA/
PRA] result of which:

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

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

...

11.7 Acquisition or increase of control: assessment process and criteria

...

11.7.2 G Section 191A deals with the procedure the *FSA appropriate regulator* must
[FCA/
PRA] follow where ~~there has been a failure to notify or a default~~ the *appropriate
regulator* reasonably believes that:

- (1) there has been a failure to give notice under section 178(1) of the *Act*
in circumstances where notice was required;
- (2) there has been a breach of a condition imposed under section 187 of
the *Act*; or
- (3) there are grounds for objecting to control on the basis of the matters
in section 186 of the *Act*.

...

11.7.13 G Before making a determination under section 185 or giving a *warning notice*
[FCA/
PRA] under section 191A, the *FSA appropriate regulator* must comply with the
requirements as to consultation with EC competent authorities set out in

section 188 of the *Act* and with the other regulator set out in sections 187A, 187B and 191A of the *Act*, as applicable.

...

11.8 Changes in the circumstances of existing controllers

...

- 11.8.2 G In assessing whether a matter should be notified to the *FSA appropriate*
[FCA] *regulator* under SUP 11.8.1R(1), SUP 11.8.1R(2) or SUP 11.8.1R(3), a *firm* should have regard to the *guidance* on satisfying the suitability threshold conditions 5-(Suitability) contained in COND 2.5.

...

11.9 Changes in close links

Requirement to notify changes in close links

- 11.9.1 R (1) ~~A firm must notify the FSA that it has become or ceased to be closely linked with any person. The notification must be made by completing the Close Links Notification Form (see SUP 11.9.3A G) and must include the information set out in SUP 16.5.4 R (4). [deleted]~~
- (2) ~~If a group includes more than one firm, a single close links notification may be made by completing the Close Links Notification Form and so satisfy the notification requirement for all firms in the group. Nevertheless, the requirement to notify, and the responsibility for notifying, remains with each firm in the group. [deleted]~~
- 11.9.1A R (1) A firm must notify the FCA that it has become or ceased to be
[FCA] closely linked with any person. The notification must be made by
completing the Close Links Notification Form (see SUP 11.9.3AG)
and must include the information set out in SUP 16.5.4R (4).
- (2) If a group includes more than one firm, a single close links
notification may be made by completing the Close Links
Notification Form and so satisfy the notification requirement for all
firms in the group. Nevertheless, the requirement to notify, and the
responsibility for notifying, remains with each firm in the group.
- 11.9.1B R (1) A firm must notify the PRA that it has become or ceased to be
[PRA] closely linked with any person. The notification must be made by
completing the Close Links Notification Form (see SUP 11.9.3AG)

and must include the information set out in *SUP 16.5.4 R (4)*.

- (2) If a *group* includes more than one *firm*, a single close links notification may be made by completing the Close Links Notification Form and so satisfy the notification requirement for all *firms* in the *group*. Nevertheless, the requirement to notify, and the responsibility for notifying, remains with each *firm* in the *group*.

...

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

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

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

Form of notification

11.9.3A G ~~The Close Links Notification Form approved by the *FSA* for notifications under *SUP 11.9.1 R*, *SUP 11.9.5 R* and *SUP 16.5.4 R (1)*, may be found at the *FSA* website www.fsa.gov.uk/Pages/Doing/Regulated/Notify/index.shtml. [deleted]~~

11.9.3B G The Close Links Notification Form approved by the *FCA* for notifications under *SUP 11.9.1R*, *SUP 11.9.5R* and *SUP 16.5.4R (1)*, may be found at the *FCA* website [web address to be inserted].
[FCA]

11.9.3C G The Close Links Notification Form approved by the *PRA* for notifications under *SUP 11.9.1R*, *SUP 11.9.5R* and *SUP 16.5.4R (1)*, may be found at the *PRA* website [web address to be inserted].
[PRA]

Timing of notification requirement

- 11.9.4 R ~~The *firm* must make a notification to the *FSA* under *SUP 11.9.1 R*: [deleted]~~
- (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 [deleted]~~
- (2) ~~where a *firm* has elected to report on a *monthly* basis, within fifteen *business days* of the end of each *month* by completing the Close Links Notification Form, including the information set out in *SUP 16.5.4 R (4)* for that *month* and must submit the *group* organisation~~

~~chart on a quarterly basis unless there have been no changes since the submission of the previous organisation chart to the FSA, in which case the *group* organisation chart is not required. [deleted]~~

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

- (1) as soon as reasonably practicable and no later than one *month* after it becomes aware that it has become or ceased to be closely linked with any *person*; or
- (2) where a *firm* has elected to report on a *monthly* basis, within fifteen *business days* of the end of each *month* by completing the Close Links Notification Form, including the information set out in SUP 16.5.4R (4) for that *month* and must submit the *group* organisation chart on a quarterly basis unless there have been no changes since the submission of the previous organisation chart to the FCA, in which case the *group* organisation chart is not required.

11.9.4B R The *firm* must make a notification to the PRA under SUP 11.9.1R :
[PRA]

- (1) as soon as reasonably practicable and no later than one *month* after it becomes aware that it has become or ceased to be closely linked with any *person*; or
- (2) where a *firm* has elected to report on a *monthly* basis, within fifteen *business days* of the end of each *month* by completing the Close Links Notification Form, including the information set out in SUP 16.5.4R (4) for that *month* and must submit the *group* organisation chart on a quarterly basis unless there have been no changes since the submission of the previous organisation chart to the PRA, in which case the *group* organisation chart is not required.

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. [deleted]~~

- (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. [deleted]~~

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

- (2) An election to report changes in *close links* on a *monthly* basis will stand until such time as the *firm* gives its usual supervisory contact at

the FCA at least one *month's* written notice of its intention to cease reporting changes in *close links* on a *monthly* basis.

- 11.9.5B R (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 contacts at both the *PRA* and *FCA*.
- (2) An election to report changes in *close links* on a *monthly* basis will stand until such time as the *firm* gives its usual supervisory contacts at both the *PRA* and *FCA* 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*.
[deleted]~~
- 11.9.6A G The *FCA* considers that *monthly* reporting of changes in *close links* will ordinarily only be appropriate for *firms* forming part of large *groups*.
[FCA]
- 11.9.6B G The *PRA* considers that *monthly* reporting of changes in *close links* will ordinarily only be appropriate for *firms* forming part of large *groups*.
[PRA]

Appendix 10

Designation of changes to SUP 11

Appendix 10: Designation of changes to SUP 11

Handbook Provision	Designation
...	...
SUP 11.2.3	PRA and FCA
...	...
SUP 11.2.5	PRA and FCA
...	...
SUP 11.5.9	PRA and FCA
SUP 11.5.10	PRA and FCA
...	...
SUP 11.7.2	PRA and FCA
...	...
SUP 11.7.13	PRA and FCA
...	...
SUP 11.8.2	PRA and FCA
...	...
SUP 11.9.1	PRA and FCA
SUP 11.9.1A	FCA
SUP 11.9.1B	PRA
...	...
SUP 11.9.3XA	FCA
SUP 11.9.3XB	PRA
SUP 11.9.3B	FCA
SUP 11.9.3C	PRA
...	...

SUP 11.9.4A	FCA
SUP 11.9.4B	PRA
SUP 11.9.5A	FCA
SUP 11.9.5B	PRA
...	...
SUP 11.9.6A	FCA
SUP 11.9.6B	PRA
...	...

Appendix 11

Changes to Chapter 13, 13A and 14 of the Supervision manual (SUP 13, 13A and 14)

PASSPORTING LEGAL CUTOVER INSTRUMENT 2012

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct 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 137A (The FCA’s general rules);
 - (2) section 137R (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance); and
 - (4) paragraph 5(4) of Schedule 4 (Treaty Rights: Notice to UK regulator).
- B. The rule-making powers referred to above are specified for the purposes of section 138G (Rule-making instruments) of the Act.

Powers exercised by the Prudential Regulation Authority

- C. The Prudential Regulation 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 137E (The PRA’s general rules);
 - (2) section 137R (General supplementary powers); and
 - (3) paragraph 5(4) of Schedule 4 (Treaty Rights: Notice to UK regulator).
- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- E. This instrument comes into force on *[date]*.

Amendments to the Handbook

- F. The modules of the FCA and PRA Handbooks of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Supervision manual (SUP)	Annex B

Citation

- G. This instrument may be cited as the Passporting Legal Cutover Instrument 2012.

By order of the Board of the Financial Conduct Authority
[date]

By order of the Board of the Prudential Regulation Authority
[date]

Annex A**Amendments to the Glossary of definitions**

In this Annex all text is new and is not underlined.

- appropriate UK regulator*
- (1) in relation to an *EEA firm* (in accordance with Schedule 3 paragraph 13(4) and 14(4) to the *Act*), whichever of the *FCA* or *PRA* is the *competent authority* for the purposes of the relevant *Single Market Directive*;
 - (2) in relation to a *UK firm* (in accordance with Schedule 3 paragraph 18A to the *Act*),
 - (a) the *PRA*, where the *firm* is a *PRA-authorised person*; and
 - (b) in any other case, the *FCA*;
 - (3) in relation to a *Treaty firm* (in accordance with section 35(2A) of the *Act*),
 - (a) in the case of a *PRA-authorised person*, the *PRA*; and
 - (b) in any other case, the *FCA*.

Annex B

Amendments to the Supervision manual (SUP)

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

13 Exercise of passport rights by UK firms

...

13.2 Introduction

...

13.2.3 G In some circumstances, a *UK firm* that is carrying on business which is outside the scope of the *Single Market Directives* has a right under the *Treaty* to carry on that business. For example, for an *insurer* carrying on both direct insurance and *reinsurance* business, the ~~authorisation~~ authorisation of *reinsurance* business is not covered by the *Insurance Directives*. The *firm* may, however, have rights under the *Treaty* in respect of its *reinsurance* business. Such *UK firms* may wish to consult with the ~~FSA~~ appropriate UK regulator on their particular circumstances (see SUP 13.12.2G).

13.2.4 G In SUP 13 the “appropriate UK regulator” amounts to whichever of the FCA and the PRA is the competent authority for authorising the relevant UK firm.
[FCA/
PRA]

13.3 Establishing a branch in another EEA State

...

The conditions for establishing a branch

13.3.2 G A *UK firm* other than a *UK pure reinsurer* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the *Act* are satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). These conditions are that:

(1) the *UK firm* has given the ~~FSA~~ appropriate UK regulator, in accordance with the ~~FSA~~ appropriate UK regulator’s rules (see SUP 13.5.1R), notice of its intention to establish a *branch* (known as a *notice of intention*) which :

(a) identifies the activities which it seeks to carry on through the

branch; and

- (b) includes such other information as may be specified by the *FSA appropriate UK regulator* (see SUP 13.5.1R);
- (2) the *FSA appropriate UK regulator* has given notice (known as a *consent notice*) to the *Host State regulator*;
- (2A) if the *UK firm's EEA right* relates to providing *collective portfolio management services*, the *FSA appropriate UK regulator* has provided to the *Host State regulator*:
 - ...
- (3) (a) if the *UK firm's EEA right* derives from the *Insurance Mediation Directive* one month has elapsed beginning on the date on which the *UK firm* received notice that the *FSA appropriate UK regulator* had given a *consent notice* as described in SUP 13.3.6G(1) (see SUP 13.3.2AG);
- (b) in any other case:
 - (i) the *Host State regulator* has notified the *UK firm* (or, where the *UK firm* is passporting under the *Insurance Directives*, the *FSA PRA*) of the *applicable provisions* or, in the case of a *UK firm* passporting under *MiFID* or the *UCITS Directive*, that the *branch* may be established; or
 - (ii) two months have elapsed beginning with the date on which the *FSA appropriate UK regulator* gave the *consent notice*.

- 13.3.2A G If the *UK firm* is passporting under the *Insurance Mediation Directive* and the *EEA State* in which the *UK firm* is seeking to establish a *branch* has not notified the European Commission of its wish to be informed of the intention of *persons* to establish a *branch* in its territory in accordance with article 6(2) of that directive, SUP 13.3.2G(2) and SUP 13.3.2G(3) do not apply. Accordingly, the *UK firm* may establish the *branch* to which its *notice of intention* relates as soon as the conditions referred to in SUP 13.3.2G(1) are satisfied. The list of *EEA States* that have notified the European Commission of their wish to be informed in accordance with article 6(2) of the *Insurance Mediation Directive* is published on the *FSA's FCA's* website at [FCA web address to be confirmed].
- 13.3.2B G An *appointed representative* appointed by a *firm* to carry on *insurance mediation activity* on its behalf may establish a *branch* in another *EEA State* under the *Insurance Mediation Directive*. In this case, the *notice of intention* in SUP 13.3.2G(1) should be given to the *FSA appropriate UK regulator* by the *firm* on behalf of the *appointed representative*.
- 13.3.2C G An *exempt professional firm* which is included in the record of *unauthorised persons* carrying on *insurance mediation activity* maintained by the *FSA*

- FCA *FCA* under article 93 of the *Regulated Activities Order* may establish a *branch* in another *EEA State* under the *Insurance Mediation Directive* (see *PROF 7.2*).
- ...
- 13.3.3 G Where the *UK firm* is passporting under the *Insurance Directives* and the
PRA *Host State regulator* has notified the *FSA PRA* of the *applicable provisions*, then under paragraph 19(9) of Part III of Schedule 3 to the *Act*, the *FSA PRA* is required to inform the *firm* of these provisions.
- 13.3.3A G (1) ...
PRA
- (2) Under section 3 of Part III of the *General Protocol*, *Home State regulators* have agreed to inform *Host State regulators* if a *pure reinsurer* for which the *Home State* is responsible carries on business through a *branch* in the *Host State*. Therefore *SUP 13.5.1AR* requires a *UK firm* passporting under the *Reinsurance Directive* to notify the *FSA PRA* of certain information relating to the *branch*.
- ...
- Issue of a consent notice to the Host State regulator
- 13.3.5 G (1) If the *UK firm's EEA right* derives from the *Banking Consolidation Directive* or *MiFID*, the *FSA appropriate UK regulator* will give the
[FCA/
PRA] *Host State regulator* a *consent notice* within three *months* unless it has reason to doubt the adequacy of a *UK firm's* resources or its administrative structure. The *Host State regulator* then has a further two *months* to notify the *applicable provisions* (if any) and prepare for the supervision, as appropriate, of the *UK firm*, or in the case of a *MiFID investment firm*, to inform the *UK firm* that a *branch* can be established.
- (1A) If the *UK firm's EEA right* derives from the *UCITS Directive*, the *FSA appropriate UK regulator* will give the *Host State regulator* a *consent notice* within two *months* unless it has reason to doubt the adequacy of the *UK firm's* resources or its administrative structure. The *Host State regulator* then has a further two *months* to prepare for the supervision of the *UK firm*.
- (2) (a) If the *UK firm's EEA right* derives from the *Insurance Directives*, the *FSA PRA* will give the *Host State regulator* a *consent notice* within three *months* unless it has reason to:
- ...
- (b) In assessing the matters in (2)(a), the *FSA PRA* may, in particular, seek further information from the *firm* or require a report from a *skilled person* (see *SUP 5* (skilled persons)).

- (c) If the *FSA PRA* has required a financial recovery plan of a *UK firm* of the kind mentioned in paragraph 1 of article 38 of the *Consolidated Life Directive* or paragraph 1 of article 20a of the *First Non-Life Directive*, the *FSA PRA* will not give a *consent notice* for so long as it considers that *policyholders* are threatened within the meaning of those provisions.
- (d) If the *UK firm's EEA right* derives from the *Insurance Mediation Directive* and *SUP 13.3.2G(2)* applies, the *FSA appropriate UK regulator* will give the *Host State regulator* a *consent notice* within one *month* of the date on which it received the *UK firm's notice of intention*. In cases where *SUP 13.3.2G(2)* does not apply (see *SUP 13.3.2AG*), the *UK firm* may establish a *branch* as soon as it satisfies the conditions referred to in *SUP 13.3.2G*.

13.3.5A G Where the PRA is the appropriate UK regulator, it will consult the FCA before deciding whether to give a consent notice, except where paragraph 19(7A) of Part III of Schedule 3 to the Act applies. Where the FCA is the appropriate UK regulator, it will consult the PRA before deciding whether to give a consent notice in relation to a UK Firm whose immediate group includes a PRA-authorized person.
[FCA/
PRA]

- 13.3.6 G (1) If the *FSA appropriate UK regulator* gives a *consent notice*, it will inform the *UK firm* in writing that it has done so.
[FCA/
PRA]
- (2) The *consent notice* will contain, among other matters, the *requisite details* or, if the *firm* is passporting under the *Insurance Directives*, the *relevant EEA details* (see *SUP 13 Annex 1R*) provided by the *UK firm* in its *notice of intention* (see *SUP 13.5 (Notices of intention)*).
- (3) Where a *consent notice* is given under the *UCITS Directive*, the *FSA appropriate UK regulator* will at the same time:

...

- 13.3.7 (1) If the *FSA appropriate UK regulator* proposes to refuse to give a *consent notice*, then paragraph 19(8) of Part III of Schedule 3 to the *Act* requires the *FSA appropriate UK regulator* to give the *UK firm* a *warning notice*.
[FCA/
PRA]
- (2) If the *FSA appropriate UK regulator* decides to refuse to give a *consent notice*, then paragraph 19(12) of Part III of Schedule 3 to the *Act* requires the *FSA appropriate UK regulator* to give the *UK firm* a *decision notice* within three *months* of the date on which it received the *UK firm's notice of intention* (two *months* in the case of a *UK firm* which is a *UCITS management company*). The *UK firm* may refer the matter to the *Tribunal*.

- (3) ~~For details of the *FSA's* procedures for the giving of *warning notices* or *decision notices* see *DEPP 2* (Statutory notices and the allocation of decision making). [deleted]~~

13.3.7A G For details of the *FCA's* procedures for the giving of *warning notices* or *decision notices* see *DEPP 2* (Statutory notices and the allocation of decision making).
FCA

UCITS management companies: other information to be provided to the Host State

13.3.8 G A *UK firm* seeking to provide *collective portfolio management* services from a *branch* in another *EEA State*, is advised that it will need to refer to the rules of the *competent authority* of the *UCITS Home State* implementing article 20 of the *UCITS Directive* which will require it to submit to that *competent authority* information relating to its depositary agreement and certain delegation arrangements.
FCA

13.4 Providing cross border services into another EEA State

Where is the service provided?

13.4.1 G *Guidance* on where a *cross border service* is provided is given in *SUP App*
[FCA/
PRA] 3.

The conditions for providing cross border services into another EEA State

13.4.2 G A *UK firm*, other than a *UK pure reinsurer*, cannot start providing *cross border services* into another *EEA State* under an *EEA right* unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the *Act* and, if it derives its *EEA right* from the *Insurance Directives*, paragraph 20(4B) of Part III of Schedule 3 to the *Act*. It is an offence for a *UK firm* which is not an *authorised person* to breach this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). The conditions are that:
[FCA /
PRA]

- (1) the *UK firm* has given the ~~*FSA*~~ *appropriate UK regulator*, in the way specified by ~~*FSA*~~ *the appropriate UK regulator's rules* (see *SUP* 13.5.2R), notice of its intention to provide *cross border services* (known as a *notice of intention*) which:
 - (a) identifies the activities which it seeks to carry on by way of provision of *cross border services*; and
 - (b) includes such other information as may be specified by the ~~*FSA*~~ *appropriate UK regulator* (see *SUP* 13.5.2R); and
- (2) if the *UK firm* is passporting under the *Insurance Directives*, the *firm* has received written notice from the ~~*FSA*~~ *PRA* as described in *SUP* 13.4.6G; or

- (3) if the *UK firm* is passporting under the *Insurance Mediation Directive* and the *EEA State* in which the *UK firm* is seeking to provide services has notified the European Commission of its wish to be informed of the intention of *persons* to provide *cross border services* in its territory in accordance with article 6(2) of that directive, one *month* has elapsed beginning with the date on which the *UK firm* received written notice from the ~~FSA~~ appropriate UK regulator as described in SUP 13.4.5G (paragraph 20 (3B)(c) of Schedule 3 to the *Act*).

13.4.2A G An *appointed representative* appointed by a *firm* to carry on *insurance mediation activity* on its behalf may provide *cross border services* in another *EEA State* under the *Insurance Mediation Directive*. In this case, the *notice of intention* in SUP 13.4.2G(1) should be given to the ~~FSA~~ appropriate UK regulator by the *firm* on behalf of the *appointed representative*.
[FCA/
PRA]

13.4.2B G An *exempt professional firm* which is included in the record of *unauthorised persons* carrying on *insurance mediation activity* maintained by the ~~FSA~~ FCA under article 93 of the *Regulated Activities Order* may provide *cross border services* in another *EEA State* under the *Insurance Mediation Directive* (see PROF 7.2).
FCA

...

Issuing a consent notice or notifying the Host State regulator

13.4.4 G (1) If the *UK firm's EEA right* derives from *MiFID*, the *Banking Consolidation Directive* or the *UCITS Directive*, paragraph 20(3) of Part III of Schedule 3 to the *Act* requires the ~~FSA~~ appropriate UK regulator to send a copy of the *notice of intention* to the *Host State Regulator* within one *month* of receipt. A *UK firm* passporting under the *Banking Consolidation Directive* may start providing *cross border services* as soon as it satisfies the relevant conditions (see SUP 13.4.2G).
[FCA/
PRA]

- (2) (a) If the *UK firm's EEA right* derives from the *Insurance Directives*, paragraph 20(3A) of Part III of Schedule 3 to the *Act* requires the ~~FSA~~ PRA, within one *month* of receiving the *notice of intention*, to:

...

- (b) The issue or refusal of a *consent notice* under paragraph 20(3A) of Part III of Schedule 3 to the *Act* is the consequence of a regulatory decision, and this *consent notice* (unlike the *consent notice* for establishment of a *branch*) is not a *statutory notice* as set out in section 395 of the *Act*. A *UK firm* that receives notice that the ~~FSA~~ PRA refuses to give a *consent notice* may refer the matter to the *Tribunal* under paragraph 20(4A) of Part III of Schedule 3 to the *Act*.

- (c) If the *FSA PRA* has required of a *UK firm* a financial recovery plan of the kind mentioned in paragraph 1 of article 38 of the *Consolidated Life Directive* or paragraph 1 of article 20a of the *First Non-Life Directive*, the *FSA PRA* will not give a *consent notice* for so long as it considers that *policyholders'* rights are threatened within the meaning of those provisions.
- (2A) (a) If the *UK firm's EEA right* derives from the *Insurance Mediation Directive*, and the *EEA State* in which the *UK firm* is seeking to provide services has notified the European Commission of its wish to be informed of the intention of *persons* to provide *cross border services* in its territory in accordance with article 6(2) of that directive, paragraph 20(3B)(a) of Part III of Schedule 3 to the *Act* requires the *FSA appropriate UK regulator* to send a copy of the *notice of intention* to the *Host State regulator* within one *month* of receipt. Otherwise, the *UK firm* may start providing *cross border services* as soon as it satisfies the relevant conditions (see *SUP 13.4.2G*).
- (b) The list of the *EEA States* that have notified the European Commission of their wish to be informed in accordance with article 6(2) of the *Insurance Mediation Directive* is published on the *FSA FCA's* website at [FCA web address to be confirmed].
- (2B) Where a *consent notice* is given under the *UCITS Directive*, the *FSA FCA* will at the same time:
- ...
- 13.4.4A [FCA/PRA] G Where the *PRA* is the *appropriate UK regulator*, it will consult the *FCA* before deciding whether to give a *consent notice* and where the *FCA* is the *appropriate UK regulator*, it will consult the *PRA* before deciding whether to give a *consent notice* in relation to a *UK firm* whose immediate group includes a *PRA-authorised person*.
- 13.4.5 [FCA/PRA] G When the *FSA appropriate UK regulator* sends a copy of a *notice of intention*, or if it gives a *consent notice* to the *Host State regulator*, it must inform the *UK firm* in writing that it has done so (paragraphs 20(3B)(b) and (4) of Schedule 3 to the *Act*).
- Applicable provisions for cross border services
- 13.4.6 PRA G ...
- (2) If the *UK firm* is passporting under the *Insurance Directives*, then the *Host State regulator* may notify the *FSA PRA* if there are any ~~applicable provisions~~ *applicable provisions*. If so, the *FSA PRA* will

inform the *UK firm* of the *applicable provisions*.

...

13.5 Notices of intention

...

Specified contents: notice of intention to provide cross border services

...

13.5.2- R (1) A *UK firm* wishing to provide a service into a particular *EEA State*
A for the first time under the *auction regulation* must inform the ~~FSA~~
[FCA / appropriate UK regulator of the information in (2) by email to
PRA] ~~emissionstrading@fsa.gov.uk~~ [email address to be confirmed] prior
to its provision of that service or whenever possible thereafter.

- (2) The information required by (1) is:
- (a) name of the *firm* and the *FSA firm* reference number;
 - (b) *EEA state* in which the service is or will be provided; and
 - (c) the proposed commencement date of the service or the date on which the service commenced.

...

Method of submission of notices

13.5.3 R (1) A *UK firm*, other than a *credit union*, must submit any notice under
[FCA/ *SUP 13.5.1R (1)*, *SUP 13.5.1AR* or *SUP 13.5.2R* online at [FCA web
PRA] address to be confirmed] using the ~~FSA's~~ ONA system.

...

- (2) ~~A *credit union* must submit any notice under *SUP 13.5.1R(1)*, *SUP 13.5.1AR* or *SUP 13.5.2R* in the way set out in *SUP 15.7.4R* to *SUP 15.7.9G* (Form and method of notification). [deleted]~~

...

- (3) Where a *firm* is obliged to submit a notice in accordance with (1), if the ~~FSA's~~ information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit that notice in the way set out in *SUP 15.7.4R* to *SUP 15.7.9G* (Form and method of notification).

...

13.5.3A G A credit union must submit any notice under SUP 13.5.1R(1), SUP 13.5.1AR
PRA or SUP 13.5.2R in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form
and method of notification).

13.5.4 G (1) If the *FSA's* information technology systems fail and online
[FCA/ submission is unavailable for 24 hours or more, the *FSA appropriate*
PRA] *UK regulator* will endeavour to publish a notice on its website
confirming that online submission is unavailable and that the
alternative methods of submission set out in SUP 13.5.3R(3) and
SUP 15.7.4R to SUP 15.7.9G (Form and method of notification)
should be used.

...

13.5.4A G [deleted]

...

Translations

13.5.6 G (1) A *UK firm* passporting under the *Banking Consolidation Directive*,
PRA the *Insurance Directives* or the *Reinsurance Directive* may have to
submit the *requisite details* or relevant details in the language of the
Host State as well as in English. For a *UK firm* passporting under the
Insurance Directives this translated document will not include the
relevant UK details. Further information is available from the
~~Passport Notifications Unit~~ PRA authorisations team.

(2) A *UK firm* may wish to discuss with the ~~Passport Notifications Unit~~
PRA authorisations team the appropriate time for providing the
translations in (1), given that further information or clarification of
the details provided may be required by the *FSA PRA*.

...

13.6 Changes to branches

...

13.6.3 G *UK firms* should also note that changes to the details of *branches* may lead to
[FCA/ changes to the *applicable provisions* to which the *UK firm* is subject. These
PRA] changes should be communicated to the *UK firm* either by the *Host State*
regulator, or, if the *firm* is passporting under *Insurance Directives*, via the
FSA PRA.

Firms passporting under the Banking Consolidation Directive and the UCITS
Directive.

...

13.6.5 G Where the change arises from circumstances within the control of the *UK firm*, the requirements in regulation 11(2) are that:
[FCA/
PRA]

- (1) the *UK firm* has given notice to the *FSA appropriate UK regulator* and to the *Host State regulator* stating the details of the proposed change;
- (2) the *FSA appropriate UK regulator* has given the *Host State regulator* a notice informing it of the details of the change; and

...

Firms passporting under MiFID

...

13.6.5B G The requirements of regulation 11A(2) are that:
[FCA/
PRA]

- (1) the *UK firm* has given a notice to the *FSA appropriate UK regulator* stating the details of the proposed change; and

...

Firms passporting under the Insurance Directives

...

13.6.7 G Where the change arises from circumstances within the control of the *UK firm*, the requirements in regulation 13(2) are that:
PRA

- (1) the *UK firm* has given notice to the *FSA PRA* and to the *Host State regulator* stating the details of the proposed change;
- (2) the *FSA PRA* has given the *Host State regulator* a notice informing it of the details of the proposed change;
- (3) the period of at least one *month* beginning on the day on which the *UK firm* gave the *FSA PRA* the notice in (1) has elapsed; and
- (4) either:
 - (a) a further period of one *month* has elapsed; or
 - (b) the *FSA PRA* has informed the *UK firm* of any consequential changes in the ~~applicable provisions~~ *applicable provisions* of which the *FSA PRA* has been notified by the *Host State regulator*.

13.6.8 G If a *UK firm* has exercised an *EEA right* under the *Insurance Directives* and established a *branch* in another *EEA State*, regulation 15(1) states that the *UK firm* cannot make a change in any of the *relevant UK details* unless the *UK firm* has given a notice to the *FSA PRA* stating the details of the proposed change at least one *month* before the change is effected.

13.6.9 G Where a *UK firm* with ~~*Part IV permission*~~ *Part 4A permission* to carry on both *long-term* and *general insurance business*, is passporting under the *Insurance Directives* and wishes to extend its *general insurance business* to include *long term insurance business* (or vice versa), it should complete a new *notice of intention* and not a change to details notice .

...

Firms passporting under the Reinsurance Directive

13.6.9B R A *UK firm* exercising its *EEA right* under the *Reinsurance Directive* to establish a *branch* in another *EEA State* must notify the *FSA PRA* of any changes in the information specified in *SUP 13 Annex 1R*. Whenever possible, this notification must be made as soon as the change in information is known by the *firm*.

Changes arising from circumstances beyond the control of a UK firm

13.6.10 G (1) If the change arises from circumstances beyond the *UK firm's* control, the *UK firm*:
[FCA/
PRA]

(a) is required by regulation 11(3) or regulation 13(3) to give a notice to the *FSA appropriate UK regulator* and to the *Host State regulator* stating the details of the change as soon as reasonably practicable;

(b) may, if it is passporting under the *Insurance Directives*, make a change to its *relevant UK details* under regulation 15(1) if it has, as soon as practicable (whether before or after the change), given notice to the *FSA PRA* stating the details of the change.

(2) The *FSA appropriate UK regulator* believes that for a change to arise from circumstances beyond the control of a *UK firm*, the circumstances should be outside the control of the *firm* as a whole and not just the *branch* in the *EEA State*.

...

The process

13.6.11 G When the *FSA appropriate UK regulator* receives a notice from a *UK firm* other than a *MiFID investment firm* (see *SUP 13.6.5G(1)* and *SUP 13.6.7G(1)*) or a *pure reinsurer* (see *SUP 13.6.9BR*) it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a

period of one *month* from the day on which it received the notice.

- 13.6.12 G If the *FSA appropriate UK regulator* consents to the change, then under [FCA/ PRA] regulations 11(5) and 13(5) it will:
- ...
- 13.6.12 G Where the PRA is the appropriate UK regulator, it will consult the FCA before deciding whether to give consent to a change (or proposed change) and where the FCA is the appropriate UK regulator, it will consult the PRA before deciding whether to give consent in relation to a UK firm whose immediate group includes a PRA-authorised person. [FCA/ PRA] A
- 13.6.13 G If a *UK firm* is passporting under the *Banking Consolidation Directive*, then [FCA/ PRA] regulation 11(7) states provides that the *FSA PRA* may not refuse to consent to a change unless, having regard to the change and to the EEA activities the *UK firm* is seeking to carry on, it doubts the adequacy of the administrative structure or the financial situation of the *UK firm*. In reaching its determination, the *FSA PRA* may have regard to the adequacy of management, systems and the presence of relevant skills needed for the EEA activities to be carried on.
- 13.6.14 G If a *UK firm* is passporting under the *Insurance Directives*, then regulation [FCA/ PRA] 13(7) states provides that the *FSA PRA* may not refuse to consent to a change unless, having regard to the change, the *FSA PRA* has reason:
- ...
- 13.6.15 G If the *FSA appropriate UK regulator* refuses to consent to a change, then [FCA/ PRA] under regulations 11(6) and 13(6):
- (1) the *FSA appropriate UK regulator* will give notice of the refusal to the *UK firm*, stating its reasons and giving an indication of the *UK firm's* right to refer the matter to the *Tribunal* and the procedures on such a reference; and
 - (2) the *UK firm* may refer the matter to the *Tribunal*.
- 13.6.16 G ~~*UK firms may wish to submit the standard form*~~ Standard forms are available from the Passport Notifications Unit FCA and PRA authorisations teams (see SUP 13.12 (Sources of further information)) to give the notices to the FSA appropriate UK regulator described in SUP 13.6.5G(1), SUP 13.6.5BG, SUP 13.6.7G(1), SUP 13.6.8G and SUP 13.6.10G(1). [FCA/ PRA]

The process: MiFID investment firms

- 13.6.17 G When the *FSA appropriate UK regulator* receives a notice from a *UK MiFID investment firm* (see SUP 13.6.5BG(1)), it is required by regulation 11A(3) to inform the relevant *Host State regulator* of the proposed change as soon as reasonably practicable. The *firm* in question may make the change once the [FCA/ PRA]

period of one *month* beginning with the day on which it gave notice has elapsed.

13.7 Changes to cross border services

...

Firms passporting under the UCITS Directive

13.7.3 G If a *UK firm* is passporting under the *UCITS Directive*, regulation 12(1) [FCA/ PRA] states that the *UK firm* must not make a change in its programme of operations, or the activities to be carried on under its *EEA right*, unless the relevant requirements in regulation 12(2) have been complied with. These requirements are:

- (1) the *UK firm* has given a notice to the *FSA appropriate UK regulator* and to the *Host State regulator* stating the details of the proposed change; or
- (2) if the change arises as a result of circumstances beyond the *UK firm's* control, the *UK firm* has as soon as practicable (whether before or after the change) given a notice to the *FSA appropriate UK regulator* and to the *Host State regulator*, stating the details of the change.

~~*UK firms may wish to submit the standard form*~~ Standard forms are available from the ~~Passport Notifications Unit~~ *FCA* authorisations team (see *SUP* 13.12 (Sources of further information)) to give the notices to the *FSA appropriate UK regulator* required by *SUP* 13.7.3G(1) and *SUP* 13.7.3AG.

Firms passporting under MiFID

...

13.7.3B G The requirements of regulation 12A(2) are that: [FCA/ PRA]

- (1) the *UK firm* has given notice to the *FSA appropriate UK regulator* stating the details of the proposed change; and

...

Firms passporting under the Insurance Directives

...

13.7.5 G Regulation 16(3) provides that: PRA

- (1) the *UK firm* has given a notice to the ~~*FSA*~~ *PRA* stating the details of

the proposed change; and

- (2) the *FSA PRA* has given the *Host State regulator* a notice informing it of the details of the proposed change.

- 13.7.6 G If the change arises from circumstances beyond the *UK firm's* control, the *UK firm* is required by regulation 16(4) to give a notice to the *FSA PRA* stating the details of the change as soon as reasonably practicable (whether before or after the change). See also *SUP* 13.6.10G(2), as relevant to *cross border services*.
- 13.7.6A G For further details on giving the notices to the *FSA appropriate UK regulator* as described in *SUP* 13.7.3G(1), *SUP* 13.7.3AG, *SUP* 13.7.3BG, *SUP* 13.7.5G(1) and *SUP* 13.7.6G, *UK firms* may wish to refer to the standard electronic form available from the Passport Notifications Unit (see *SUP* 13.12 (Sources of further information)) ~~to give the notices to the *FSA* as described in *SUP* 13.7.3G(1), *SUP* 13.7.3AG, *SUP* 13.7.3BG, *SUP* 13.7.5G(1) and *SUP* 13.7.6G.~~
- 13.7.7 G When the *FSA appropriate UK regulator* receives a notice from a *UK firm* (see *SUP* 13.7.5G(1) and *SUP* 13.7.6G), it is required by regulations 16(5) to either refuse or consent to the change within one *month* of receipt.
- 13.7.7A G Where the *PRA* is the *appropriate UK regulator*, it will consult the *FCA* before deciding whether to give consent to a change (or proposed change) and where the *FCA* is the *appropriate UK regulator*, it will consult the *PRA* before deciding whether to give consent in relation to a *UK firm* whose immediate group includes a *PRA-authorised person*.
- 13.7.8 G If the *FSA appropriate UK regulator* consents to the change it will:
- [FCA/
PRA]
- ...
- 13.7.9 G If the *FSA appropriate UK regulator* refuses to consent to a change it is required by regulation 16(7) to give notice of the refusal to the *UK firm*, stating its reasons and giving an indication of the *UK firm's* right to refer the matter to the *Tribunal* and the procedures that apply to such a reference.
- 13.7.10 G Where a *UK firm* with ~~*Part IV permission*~~ *Part 4A permission* to carry on both *long-term* and *general insurance business* is passporting under the *Insurance Directives* and wishes to extend its *general insurance business* to include *long term insurance business* (or vice versa), it should complete a new *notice of intention* and not a change to details notice.

Firms passporting under the Banking Consolidation Directive and Insurance Mediation Directive

- 13.7.11 G A *UK firm* providing *cross border services* under the *Banking Consolidation Directive* or *Insurance Mediation Directive* is not required to supply a
- [FCA/

PRA] change to the details of *cross border services* notice.

Firms passporting under the Reinsurance Directive

13.7.12 G A *UK firm* providing *cross border services* under the *Reinsurance Directive*
PRA is not required to supply notification of, or a change to the details of, its *cross border services*.

13.8 Changes of details: provision of notices to the **FSA appropriate UK regulator**

...

13.8.1A G The effect of *SUP* 13.8.1R(1) is that a *firm* should submit any form, notice or
[FCA/
PRA] application under *SUP* 13.8.1R(1) in the following ways:

- (1) A *UK firm*, other than a *credit union*, should submit it online at [FCA web address to be confirmed] using the ONA system.
- (2) If the *FSA's* information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* should submit it in the way set out in *SUP* 13.5.3R(3) and *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification). *GEN* 1.3.2R (Emergency) does not apply in these circumstances.
- (3) If the *FSA's* information technology systems fail and online submission is unavailable for 24 hours or more, the *FSA appropriate UK regulator* will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission should be used.
- (4) ~~A *credit union* should submit it in the way set out in *SUP* 13.5.3R(3) and *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification).~~
[deleted]

13.8.1B G A *credit union* should submit any form, notice or application under *SUP*
PRA *13.8.1R(1)* in the way set out in *SUP* 13.5.3R(3) and *SUP* 15.7.4R to *SUP*
15.7.9G (Form and method of notification).

13.8.2 G *UK firms* passporting under the *Banking Consolidation Directive* or the
PRA *Insurance Directives* may be required to submit the change to details notice in the language of the *Host State* as well as in English.

...

13.10 Applicable provisions

...

- 13.10.2 G *UK firms* passporting under the *Banking Consolidation Directive* should note that, under the Directive, the *Host State* is responsible, together with the ~~FSA~~ PRA, for monitoring the liquidity of a *branch* established by a *UK firm* in another *EEA State*.

...

13.12 Sources of further information

- 13.12.1 G (1) Given the complexity of issues raised by passporting, *UK firms* are advised to consult legislation and also to obtain legal advice at earliest opportunity. Firms are encouraged to contact their usual supervisory contact at the ~~FSA~~ appropriate UK regulator to discuss their proposals. However, a *UK firm* which is seeking *guidance* on procedural or notification issues relating to passporting should contact the ~~Passport Notifications Unit~~ FCA and PRA authorisations teams, as and where appropriate.
- (2) An applicant for ~~Part IV permission~~ Part 4A permission which is submitting a *notice of intention* with its application for such *permission* should contact the ~~Permissions department (020 7066 3954)~~ in the first instance FCA and PRA authorisations teams, as and where appropriate.
- 13.12.2 G To contact the ~~Passport Notifications Unit:~~ FCA and/or PRA authorisations teams, please see the details provided on that regulator's website.
- (1) ~~telephone on 020 7066 1000; fax on 020 7066 9798 ; or~~
- (2) ~~write to: The Passport Notifications Unit, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS; or~~
- (3) ~~Email: passport.notifications@fsa.gov.uk~~

...

13A Qualifying for authorisation under the Act

13A.1 Application and purpose

...

13A.1.2 G This chapter does not apply to:
[FCA/
PRA]

- (1) an *EEA firm* that wishes to carry on in the *United Kingdom* activities which are outside the scope of its *EEA right* and the scope of a *permission* granted under Schedule 4 to the *Act*; in this case the *EEA firm* requires a "*top-up permission*" under Part ~~IV~~ 4A of the *Act* (see the ~~FSA~~ *appropriate UK regulator's* website "How do I get authorised": [FCA and PRA web addresses to be confirmed]); or

...

- (4) a *market operator* that operates a *regulated market* or an *MTF* in an *EEA State* other than the *UK* and wishes to make appropriate arrangements so as to facilitate access to and use of its system by remote users or participants in the *UK*. See *SUP* App 3.6.25G for ~~guidance~~ *guidance*.

...

Purpose

13A.1.4 G (1) ...
[FCA/
PRA]

- (2) This chapter also provides ~~guidance~~ *guidance* on Schedule 3 to the *Act* for an *incoming EEA firm* that wishes to establish a *branch* in the *United Kingdom* instead of, or in addition to, providing *cross border services* into the *United Kingdom* or vice versa.

13A.1.5 G (1) *EEA firms* should note that this chapter only addresses the procedures which the ~~FSA~~ *appropriate UK regulator* will follow under the *Act*. So, an *EEA firm* should consider this *guidance* in conjunction with the requirements with which it will have to comply in its *Home State*.

(2) The *guidance* in this chapter represents the ~~FSA's~~ *appropriate UK regulator's* interpretation of the *Single Market Directives*, the *Act* and the secondary legislation made under the *Act*. The *guidance* is not exhaustive and should not be seen as a substitute for a *person* consulting the legislation or taking legal advice.

...

13A.3 Qualifications for authorisation under the Act

EEA firms

...

- 13A.3.1C G (1) Under paragraph 15A(1) of Part II of Schedule 3 to the Act, an EEA UCITS management company intending to exercise an EEA right to provide collective portfolio management services for a UCITS scheme must, before it undertakes that activity, obtain the FSA's appropriate UK regulator's approval to manage that UCITS scheme. Firms should use the application form set out in SUP 13A Annex 3 R (EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom) for this purpose.
- (1A) If the FCA is the appropriate UK regulator, and the firm is subject to PRA regulation, or the firm's immediate group includes a PRA-
authorised person, the FCA will give the PRA a copy of the application referred to in (1).
- (2) If the FSA appropriate UK regulator refuses the application referred to in (1), it will give a notice to the firm and the firm's Home State regulator in accordance with paragraph 15A of Part II of Schedule 3 to the Act. Before refusing an application, the FSA appropriate UK regulator will consult with the firm's Home State regulator.
- (3) Under paragraph 15B(1) of Part II of Schedule 3 to the Act, if any representations are made to the FSA appropriate UK regulator by a firm to which the notice referred to in (2) has been given, the FSA appropriate UK regulator is required to decide whether to withdraw that notice. If the FSA appropriate UK regulator decides not to withdraw that notice it must give the firm a decision notice.
- (4) ~~For details of the FSA's procedures for the giving of notices see DEPP 2 (Statutory notices and allocation of decision making).~~
[deleted]
- 13A.3.1D G For details of the FCA's procedures for the giving of notices see DEPP 2
FCA (Statutory notices and allocation of decision making).

...

Treaty firms

...

- 13A.3.6 G The effect of paragraph 5(1) and 5(2) of Schedule 4 to the *Act* is that a
[FCA/
PRA] *Treaty firm* which qualifies for *authorisation* under that Schedule must, at least seven *days* before it carries on any of the *regulated activities* covered by its *permission*, give the *FSA appropriate UK regulator* written notice of its intention to do so. Failure to do so is a criminal offence under paragraph 6(1) of that Schedule.
- 13A.3.6A G Where the *PRA* receives a notification, it will give a copy to the *FCA*, and
[FCA/
PRA] where the *FCA* receives a notification, it will give a copy to the *PRA* where relevant.
- 13A.3.7 D (1) A written notice from a *Treaty firm* under paragraph 5(2) of
[FCA/
PRA] Schedule 4 to the *Act* must be:
- (a) ~~given to a member of, or~~ addressed for the attention of, the ~~Authorisation Department~~ the authorisations team in the *PRA* or *FCA*, as appropriate; and
- (b) delivered to the *FSA appropriate UK regulator* by one of the methods in (2).
- (2) The written notice may be delivered by:
- (a) ~~post to the address in SUP 13A.3.9G below~~ either of the following addresses, as appropriate; or
- (i) the address for notices to the *FCA*: The Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS; or
- (ii) the address for notices to the *PRA*: The Prudential Regulation Authority, 20 Moorgate, London, EC2R 6DA; or
- (b) leaving the application at the address in SUP 13A.3.9G below and obtaining a time-stamped receipt; or
- (c) hand delivery to a member of the ~~Authorisation Department~~ the authorisations team in the *PRA* or *FCA*, as appropriate.
- ...
- 13A.3.9 G (1) For further information, a *Treaty firm* ~~may contact the~~
[FCA/
PRA] ~~Authorisation Department;~~ should contact the *FCA* and/or *PRA* authorisations teams using the details provided on that regulator's website.
- (a) ~~telephone on +4420 7066 3954; or~~

- (b) ~~write to the Authorisations Department, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS; or~~
- (c) ~~email corporate.authorisation@fsa.gov.uk.~~

...

13A.3.11 G ...
PRA

- (2) An insurance company with its head office in an *EEA State* other than the *United Kingdom* that is carrying on pure *reinsurance* business in that State, and which wishes to carry on such business in the *United Kingdom* and is authorised by its *Home State* but not yet under the *Reinsurance Directive*, is advised to discuss its particular requirements with the ~~Authorisation Department~~ authorisations team in the PRA. It may be entitled to exercise a *Treaty right* provided it satisfies the conditions in paragraph 3(1) of Schedule 4 to the Act (see *SUP* 13A.3.4G). Otherwise, it will have to seek a ~~Part IV permission~~ Part 4A permission (see the ~~FS4 website "How do I get authorised"~~: [PRA web address to be confirmed]).

...

13A.4 EEA firms establishing a branch in the United Kingdom

The conditions for establishing a branch

...

- 13A.4.1A G An *EEA UCITS management company* may not exercise an *EEA right* to provide *collective portfolio management* services for a *UCITS scheme* from a *branch* in the *United Kingdom* until approved by the ~~FS4~~ appropriate UK regulator to do so (see *SUP* 13A.3.1CG).
- FCA and PRA

...

- 13A.4.3 G For the purposes of paragraph 13(2)(b) of Part II of Schedule 3 to the Act, the *applicable provisions* may include ~~FS4~~ the appropriate UK regulator's rules. The *EEA firm* is required to comply with relevant *rules* when carrying on a *passport activity* through a *branch* in the *United Kingdom* as well as with relevant *UK legislation*.
- [FCA/
PRA]

...

The notification procedure

13A.4.4 G (1) When the *FSA appropriate regulator* receives a consent notice from the *EEA firm's Home State regulator*, it will, under paragraphs 13(2)(b), (c) and 13(3) of Part II of Schedule 3 to the *Act*, notify the *applicable provisions* (if any) to:

...

(1A) The notice date is:

(a) for a *MiFID investment firm*, the date on which the *Home State* gave the consent notice; and

(b) in any other case, the date on which the *FSA appropriate UK regulator* received the consent notice.

(2) Although the *FSA appropriate UK regulator* is not required to notify the *applicable provisions* to an *EEA firm* passporting under the *Insurance Mediation Directive* or *MiFID*, these provisions are set out in *SUP 13A Annex 1G* (Application of the Handbook to Incoming EEA Firms).

13A.4.4A G (1) Where the *PRA* receives a consent notice, it will give a copy to the *FCA* without delay, and where the *FCA* receives a consent notice it will give a copy to the *PRA*, where relevant, without delay.

(2) In a case where the *FCA* is the *appropriate UK regulator*, the consent of the *PRA* is required for any notification by the *FCA* which relates to:

(a) a *PRA-regulated activity*;

(b) a *PRA-authorised person*; or

(c) a *person* whose immediate group includes a *PRA-authorised person*.

...

13A.5 EEA firms providing cross border services in the United Kingdom

...

The conditions for providing cross border services into the United Kingdom

13A.5.3 G ...
[FCA/
PRA]

(3) An *EEA UCITS management company* may not exercise an *EEA right* to provide *collective portfolio management* services for a

UCITS scheme on a cross border services basis until approved by the FSA appropriate UK regulator to do so (see SUP 13A.3.1CG).

...

The notification procedure

13A.5.4 [FCA/
PRA] G (1) Unless the *EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that received authorisation under article 18 of the *auction regulation*) is passporting under the *Insurance Mediation Directive*, if the FSA appropriate UK regulator receives a regulator's notice or, where no notice is required (in the case of an *EEA firm* passporting under the *Banking Consolidation Directive*), is informed of the *EEA firm's* intention to provide *cross border services* into the *United Kingdom*, the FSA appropriate UK regulator will, under paragraphs 14(2)(b) and 14(3) of Part II of Schedule 3 to the *Act*, notify the *EEA firm* of the *applicable provisions* (if any) within two *months* of the *day* on which the FSA appropriate UK regulator received the regulator's notice or was informed of the *EEA firm's* intention.

(2) Although the FSA appropriate UK regulator is not required to notify the *applicable provisions* to an *EEA Firm* passporting under the *Insurance Mediation Directive* or *MiFID*, these provisions are set out in SUP 13A Annex 1G (Application of the Handbook to Incoming EEA Firms).

13A.5.4A [FCA/
PRA] G Where the PRA receives a notice, it will give a copy to the FCA without delay, and where the FCA receives a notice, it will give a copy to the PRA without delay, where relevant.

13A.5.5 [FCA/
PRA] G An *EEA firm* (other than an *EEA UCITS management company*) that has satisfied the *service conditions* in paragraph 14 of Part II of Schedule 3 to the *Act* is entitled to start providing *cross border services* into the *United Kingdom*. In the case of an *EEA UCITS management company*, FSA appropriate UK Regulator approval must first be obtained, as explained in SUP 13A.5.3G (see also SUP 13A.3.1CG). However, an *EEA firm* that wishes to start providing *cross border services* but has not yet received notification of the *applicable provisions* may wish to contact the FSA's Passport Notifications Unit authorisations team in the FCA or PRA, as appropriate (see SUP 13A.8.1G(2)).

13A.6 Which rules will an incoming EEA firm be subject to?

...

13A.6.4 [FCA/
PRA] G Under the *EEA Passport Rights Regulations*, references in section 60 of the *Act* (applications for approval for persons to perform controlled functions) to "the authorised person concerned" include:

...

- (2) any other *EEA firm* with respect to which the *FSA appropriate UK regulator* has received a consent notice or regulator's notice under paragraph 13 of Schedule 3 to the *Act* (see *SUP 13A.4.1G(1)* and *SUP 13A.4.2G*) or a regulator's notice under paragraph 14 of that Schedule (see *SUP 13A.5.3G(1)*), and which will be the *authorised person* concerned if the *EEA firm* qualifies for *authorisation* under that Schedule.

...

13A.7 Top-up permission

13A.7.1 G If a person established in the *EEA*:
[FCA/
PRA]

- (1) does not have an *EEA right*;
- (2) does not have *permission* as a *UCITS qualifier*; and
- (3) does not have, or does not wish to exercise, a *Treaty right* (see *SUP 13A.3.4 G* to *SUP 13A.3.11 G*);

to carry on a particular *regulated activity* in the *United Kingdom*, it must seek ~~*Part IV permission*~~ *Part 4A permission* from the *FSA appropriate UK regulator* to do so (see the *FSA appropriate UK regulator's* website "~~How do I get authorised~~": [web address to be confirmed]). This might arise if the activity itself is outside the scope of the *Single Market Directives*, or where the activity is included in the scope of a *Single Market Directive* but is not covered by the *EEA firm's Home State authorisation*. If a person also qualifies for *authorisation* under Schedules 3, 4 or 5 of the *Act* as a result of its other activities, the ~~*Part IV permission*~~ *Part 4A permission* is referred to in the *Handbook* as a *top-up permission*.

- 13A.7.2 G Where the *FSA appropriate UK regulator* grants a *top-up permission* to an
[FCA/
PRA] *incoming EEA firm* to carry on *regulated activities* for which it has neither
an *EEA right* nor a *Treaty right*, the *FSA appropriate UK regulator* is
responsible for the prudential supervision of the *incoming EEA firm*, to the
extent that the responsibility is not reserved to the *incoming EEA firm's*
Home State regulator.
- 13A.7.3 G [deleted]
- 13A.7.4 G For *guidance* on how to apply for ~~*Part IV permission*~~ *Part 4A permission*
[FCA/
PRA] under the *Act*, see the *FSA appropriate UK regulator's* website "~~How do I~~
~~get authorised~~": ([web address to be confirmed]). If an *EEA firm* or *Treaty*
firm wishes to make any subsequent changes to its *top-up permission*, it
can make an application for variation of that *permission* (see *SUP 6*
(Applications to vary and cancel ~~Part IV~~ *4A permission*)).

13A.8 Sources of further information

- 13A.8.1 G For further information on *UK regulation*, an *EEA firm*, a *Treaty firm* or a
[FCA/
PRA] *UCITS qualifier* should contact the ~~Perimeter Guidance team at the FSA.~~
~~Questions about the passporting notification procedures can be addressed~~
~~to the Passport Notifications Unit.~~ authorisations team in the *FCA* or *PRA*,
if and when appropriate. To contact the *FCA* and/or *PRA* authorisations
teams, please see the details provided on that regulator's website.

(1) ~~To contact the Perimeter Guidance team:~~

(a) ~~telephone on +44 20 7066 0082 or fax on +44 20 7066~~
~~9719;~~

(b)

(2) ~~To contact the Passport Notifications Unit:~~

(a) ~~telephone on +44 20 7066 1000 or fax on +44 20 7066~~
~~9798;~~

- (b) ~~write to: Passport Notifications Unit, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS;~~
- (c) ~~email: passport.notifications@fsa.gov.uk~~

SUP 13A.9 is deleted in its entirety. The deleted text is not shown.

...

**13A EEA UCITS management companies: application for approval to manage
Annex a UCITS scheme established in the United Kingdom**

3R
[FCA/
PRA]

Under paragraph 15A(1) of Part II of Schedule 3 to the *Act*, an *EEA UCITS management company* intending to exercise an *EEA right* to provide *collective portfolio management* services for a *UCITS scheme* must, before it undertakes that activity, obtain the *FSA appropriate UK regulator's* approval to manage that *UCITS scheme*. *Firms* should use the application form below for this purpose. *Firms* may cross refer to other sources where the information has already been provided to the *FSA*.

Application by an EEA UCITS management company to manage one or more UCITS schemes established in the United Kingdom (paragraph 15A(1) of Part II of Schedule 3 to the Financial Services and Markets Act 2000).	
...	
Has the <i>management company</i> submitted the information required by <i>COLL 12.3.4R</i> (Provision of documentation to the <u>FSA appropriate UK regulator</u> : EEA UCITS management companies), including the depositary agreement and information on delegation arrangements? Provide details:	
...	
When completed send this form to: CIS Authorisations The Financial Services <u>Conduct</u> Authority	

25 the North Colonnade
London. E14 5HS

Or electronically to: [email address to be confirmed]

14 Incoming EEA firms changing details, and cancelling qualification for authorisation

14.1 Application and purpose

...

Purpose

...

14.1.8 G The FCA and PRA will share with each other relevant information received, as necessary, in order to perform their respective functions.
[FCA/
PRA]

14.2 Changes to branch details

...

Firms passporting under the Banking Consolidation Directive and the UCITS Directive

...

14.2.3 G Where the change arises from circumstances within the control of the *incoming EEA firm*, the requirements in regulation 4(4) are that:
[FCA/
PRA]

- (1) the *incoming EEA firm* has given notice to the *FSA appropriate UK regulator* (see SUP 14.4.1G) and to its *Home State regulator* stating the details of the proposed change;
- (2) the *FSA appropriate UK regulator* has received a notice stating those details; and
- (3) either:
 - (a) the *FSA appropriate UK regulator* has informed the firm that it may make the change; or
 - (b) the period of one month beginning with the date on which the *incoming EEA firm* gave the *FSA appropriate UK regulator* the notice mentioned in (1) has elapsed.

- 14.2.4 [FCA/PRA] G Changes to the *requisite details* may lead to changes to the *applicable provisions* to which the *incoming EEA firm* is subject. The *FSA appropriate UK regulator* will, as soon as practicable after receiving a notice in *SUP 14.2.3G* or *SUP 14.2.8G*, inform the *incoming EEA firm* of any consequential changes in the *applicable provisions* (regulation 4(6)).

Firms passporting under the Insurance Directives

...

- 14.2.6 PRA G Where the change arises from circumstances within the control of the *incoming EEA firm*, the relevant requirements in regulation 6(4) are that:
- (1) the *incoming EEA firm* has given a notice to the *FSA PRA* (see *SUP 14.4.1G*) and to its *Home State regulator* stating the details of the proposed change;
 - (2) the *FSA PRA* has received from the *Home State regulator* a notice stating that it has approved the proposed change;
 - (3) the period of at least one month beginning with the day on which the *incoming EEA firm* gave the *FSA PRA* the notice in (1) has elapsed; and
 - (4) either:
 - (a) a further period of one month has elapsed; or
 - (b) the *FSA PRA* has informed the *Home State regulator* of any consequential changes in the *applicable provisions*.

...

Changes arising from circumstances beyond the control of an incoming EEA firm passporting under the Banking Consolidation Directive, UCITS Directive or Insurance Directive

- 14.2.8 [FCA/PRA] G If the change arises from circumstances beyond the *incoming EEA firm's* control, the *firm* is required by regulation 4(5) (see *SUP 14.2.2G*) or regulation 6(5) (see *SUP 14.2.5G(2)*) to give a notice to the *FSA appropriate UK regulator* (see *SUP 14.4.1G*) and to its *Home State regulator* stating the details of the change as soon as reasonably practicable.
- 14.2.9 [FCA/PRA] G The *FSA appropriate UK regulator* believes that for a change to arise from circumstances beyond the control of an *incoming EEA firm*, the circumstances should be outside the control of the *firm* as a whole and not just its UK branch. For example, the *FSA appropriate UK regulator* considers that this provision would be unlikely to apply to circumstances in which lack of planning at the *incoming EEA firm's* head office resulted in a problem arising in a *UK branch* which was outside its control. In practice, therefore, use of this provision is likely to be rare.

Firms passporting under MiFID

...

- 14.2.12 G Changes to the *requisite details* may lead to changes to the applicable provisions to which the *EEA MiFID investment firm* is subject. The ~~FSA~~ appropriate UK regulator will, as soon as practicable after receiving a notice in SUP 14.2.11G inform the *EEA MiFID investment firm* of any consequential changes in the applicable provisions.

...

14.3 Changes to cross border services

...

Firms passporting under the UCITS Directive

...

- 14.3.3 G The relevant requirements in regulation 5(3) are that:
- [FCA/
PRA]
- (1) the *incoming EEA firm* has given a notice to the ~~FSA~~ appropriate UK regulator (see SUP 14.4.1G) and to its *Home State regulator* stating the details of the proposed change;
 - (2) if the change arises from circumstances beyond the *incoming EEA firm's* control, that firm has, as soon as practicable, given to the ~~FSA~~ appropriate UK regulator and to its *Home State regulator* the notice in (1).

- 14.3.3A G [deleted]

- 14.3.4 G Under regulation 5(4), the ~~FSA~~ appropriate UK regulator is required, as soon as practicable after receiving the notice in SUP 14.3.3G, to inform the *incoming EEA firm* of any consequential changes in the *applicable provisions*.
- [FCA/
PRA]

Firms passporting under MiFID

...

- 14.3.4C G Under regulation 5(4), the ~~FSA~~ appropriate UK regulator is required, as soon as practicable after receiving the notice in SUP 14.3.4BG, to inform the *incoming EEA firm* of any consequential changes in the applicable provisions.
- [FCA/
PRA]

...

Firms passporting under the Insurance Directives

...

14.3.6 G The relevant provisions are those set out in regulation 7(4), namely that:
PRA

...

(2) the *Home State regulator* has passed on to the ~~FSA~~ PRA the information contained in that notice.

...

14.4 Notices of proposed changes: form and delivery

14.4.1 G (1) Regulation 7 to 9 of the Financial Services and Markets Act 2000
[FCA/ PRA] (Services of Notices) Regulations 2001 (SI 2001/1420) govern the manner in which notices may be submitted to the ~~FSA~~ regulators under the *EEA Passport Rights Regulations*. In summary, they should be delivered or posted to the ~~FSA's~~ appropriate UK regulator's address (See ~~(2)~~ below) and will be treated as given when received by the ~~FSA~~ appropriate UK regulator. They should not be sent by fax or electronic mail.

(2) ~~The address for notices is: The Passport Notifications Unit, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS~~ [deleted]

14.4.1A G The address for FCA notices is: FCA Authorisations, The Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London, E14 5HS.

14.4.1B G The address for PRA notices is: PRA authorisations team, The Prudential Regulation Authority, 20 Moorgate, London, EC2R 6DA.

SUP Variation of a top-up permission to carry on regulated activities outside the 14.5 scope of the Single Market Directives

14.5.1 G Where an *incoming EEA firm* has been granted *top-up permission* by the ~~FSA~~ appropriate UK regulator and wishes to vary that *permission*, the *Act*
[FCA/ PRA] requires it to apply to the ~~FSA~~ appropriate UK regulator for a variation of the *top-up permission*.

14.5.2 G ~~Guidance~~ Guidance on the procedures for applying for a variation of a
[FCA/ PRA] *permission* granted under Part ~~IV~~ 4A of the *Act*, including a *top-up permission*, is given in SUP 6 (Applications to vary and cancel Part ~~IV~~ 4A Permission).

14.6 Cancelling qualification for authorisation

Incoming EEA firms

...

- 14.6.2 [FCA/
PRA] G (1) In addition, under section 34(2) an *incoming EEA firm* may ask the *FSA appropriate UK regulator* to give a direction cancelling its *authorisation* under Schedule 3 to the *Act*.
- 14.6.3 [FCA/
PRA] G Regulation 8 states that where an *incoming EEA firm* which qualifies for *authorisation* under Schedule 3:
- (1) has ceased, or is to cease, to carry on *regulated activities* in the *United Kingdom*; and
- (2) gives notice of that fact to the *FSA appropriate UK regulator*;
- the notice is treated under regulation 8 as a request for cancellation of the *incoming EEA firm's* qualification for *authorisation* under Schedule 3 to the *Act* and so as a request under section 34(2) of the *Act*.
- 14.6.3A [FCA/
PRA] R An *EEA firm* that has exercised an *EEA right* under the *auction regulation* to establish a branch in the *United Kingdom* must notify the *FSA appropriate UK regulator* by email to emissionstrading@fsa.gov.uk [email address to be confirmed] when it ceases to carry on *regulated activities* through a branch passport in the *United Kingdom* or whenever possible thereafter.
- 14.6.3B [FCA/
PRA] G The sole purpose of the notification in SUP 14.6.3A R is to inform the *FSA appropriate UK regulator* that it may discontinue its supervision of the *UK branch* of the *incoming EEA firm's* compliance with the *applicable provisions*. The *applicable provisions* that apply to that branch are set out in SUP 13A Annex 1 G (Application of the Handbook to Incoming EEA Firms).
- 14.6.4 PRA G Where a *financial institution* (that is, a subsidiary of a *credit institution*) is passporting under the *Banking Consolidation Directive* (see SUP 14.6.1 G (2)), regulation 9(1) states that the *incoming EEA firm* may request the *FSA PRA* to direct that its qualification for *authorisation* under Schedule 3 to the *Act* is cancelled from such date as may be specified in the direction.
- 14.6.5 PRA G The *FSA PRA* may not, however, give a direction referred to in SUP 14.6.4G unless:
- ...
- (2) the *FSA PRA* has agreed with the *Home State regulator* that the

direction should be given.

- 14.6.6 G Regulation 9(3) requires that the date specified by the *FSA PRA* in a direction
PRA referred to in *SUP* 14.6.4G:

...

- (2) subject to (1), is as agreed between the *FSA PRA* and the *incoming EEA firm's Home State regulator*.

- 14.6.7 G The *FSA PRA* is required to send, as soon as practicable, a copy of the
PRA direction to the *incoming EEA firm* and to its *Home State regulator* (regulation 9(4)).

- 14.6.8 G Where the *FSA PRA* gives a direction referred to in *SUP* 14.6.4G, the
PRA *incoming EEA firm* may apply for ~~Part IV permission~~ *Part 4A permission* (see the *FSA PRA* website "[How do I get authorised](#)": [\[PRA web address to be confirmed\]](#) to take effect not earlier than the date that its qualification for *authorisation* is cancelled (as specified in the direction).

Incoming Treaty firms

- 14.6.9 G Section 35 of the *Act* states that an *incoming Treaty firm* no longer qualifies
[FCA/ PRA] for *authorisation* under Schedule 4 to the *Act* if its *Home State* *authorisation* is withdrawn.

- 14.6.10 G (1) In addition, under section 35(2) an *incoming Treaty firm* may ask the
[FCA/ PRA] *FSA appropriate UK regulator* to give a direction cancelling its *authorisation* under Schedule 4 to the *Act*.

UCITS qualifiers

- 14.6.11 G Section 36 of the *Act* states that a *UCITS qualifier* may ask the *FSA FCA* to
FCA give a direction cancelling its *authorisation* under paragraph 1(1) of Schedule 5 to the *Act*. *UCITS qualifiers* should also refer to *COLLG* 3.1.11G (Revocation of recognition of overseas schemes (section 279)).

14.7 Cancellation of a top-up permission to carry on regulated activities outside the scope of the Single Market Directives or the auction regulation

- 14.7.1 G Where an *incoming EEA firm*, an *incoming Treaty firm* or a *UCITS qualifier*
[FCA/ PRA] wishes to cancel its *top-up permission*, either with or without cancellation of its qualification for *authorisation* under Schedule 3, 4, or 5 to the *Act*, it should make an application following the procedures set out in *SUP* 6 (Applications to vary and cancel ~~Part IV~~ *4A* Permission).

14.8 Further guidance

- 14.8.1 G For further *guidance* on passporting procedures, an *incoming EEA firm*
[FCA/ ~~should~~ may contact the ~~FSAs~~ *Passport Notifications Unit* or their usual *FCA*
PRA] or *PRA* authorisations team, or their usual supervisory contact at the ~~FSAs~~
appropriate UK regulator. *Incoming Treaty firms* and *UCITS qualifiers*
~~should~~ may speak to their usual supervisory contact at the ~~FSAs~~ appropriate
UK regulator in the first instance.

Appendix 12

Designation of changes to SUP 13, 13A and 14

Appendix 12: Designation of changes to SUP 13, 13A and 14

Handbook Provision	Designation
...	...
13.2.3	FCA and PRA
13.2.4	FCA and PRA
...	...
13.3.2	FCA and PRA
13.3.2A	FCA and PRA
13.3.2B	FCA and PRA
13.3.2C	FCA
...	...
13.3.3	PRA
13.3.3A	PRA
...	...
13.3.5	FCA and PRA
13.3.5A	FCA and PRA
13.3.6	FCA and PRA
13.3.7	FCA and PRA
13.3.7A	FCA
13.3.8	FCA
13.4.1	FCA and PRA
13.4.2	FCA and PRA
13.4.2A	FCA and PRA
13.4.2B	FCA
...	...
13.4.4	FCA and PRA

13.4.4A	FCA and PRA
13.4.5	FCA and PRA
13.4.6	PRA
...	...
13.5.2-A	FCA and PRA
...	...
13.5.3	FCA and PRA
13.5.3A	PRA
13.5.4	FCA and PRA
...	...
13.5.6	PRA
...	...
13.6.3	FCA and PRA
...	...
13.6.5	FCA and PRA
...	...
13.6.5B	FCA and PRA
...	...
13.6.7	PRA
13.6.8	PRA
13.6.9	PRA
...	...
13.6.9B	PRA
13.6.10	FCA and PRA
13.6.11	FCA and PRA
13.6.12	FCA and PRA

13.6.12A	FCA and PRA
13.6.13	FCA and PRA
13.6.14	PRA
13.6.15	FCA and PRA
13.6.16	FCA and PRA
13.6.17	FCA and PRA
...	...
13.7.3	FCA and PRA
...	...
13.7.3B	FCA and PRA
...	...
13.7.5	PRA
13.7.6	PRA
13.7.6A	FCA and PRA
13.7.7	FCA and PRA
13.7.7A	FCA and PRA
13.7.8	FCA and PRA
13.7.9	FCA and PRA
13.7.10	PRA
13.7.11	FCA and PRA
13.7.12	PRA
...	...
13.8.1A	FCA and PRA
13.8.1B	PRA
13.8.2	PRA
...	...

13.10.2	PRA
...	...
13.12.1	FCA and PRA
13.12.2	FCA and PRA
...	...
13A.1.2	FCA and PRA
...	...
13A.1.4	FCA and PRA
13A.1.5	FCA and PRA
...	...
13A.3.1C	FCA and PRA
13A.3.1D	FCA
...	...
13A.3.6	FCA and PRA
13A.3.6A	FCA and PRA
13A.3.7	FCA and PRA
...	...
13A.3.9	FCA and PRA
...	...
13A.3.11	PRA
...	...
13A.4.1A	FCA and PRA
...	...
13A.4.3	FCA and PRA
...	...
13A.4.4	FCA and PRA

13A.4.4A	FCA and PRA
...	...
13A.5.3	FCA and PRA
13A.5.4	FCA and PRA
13A.5.4A	FCA and PRA
13A.5.5	FCA and PRA
...	...
13A.6.4	FCA and PRA
...	...
13A.7.1	FCA and PRA
13A.7.2	FCA and PRA
...	...
13A.7.4	FCA and PRA
13A.8.1	FCA and PRA
13A Annex 3R	FCA and PRA
...	...
14.1.8	FCA and PRA
...	...
14.2.3	FCA and PRA
14.2.4	FCA and PRA
...	...
14.2.6	PRA
...	...
14.2.8	FCA and PRA
14.2.9	FCA and PRA
...	...

14.2.12	FCA and PRA
...	...
14.3.3	FCA and PRA
...	...
14.3.4	FCA and PRA
...	...
14.3.4C	FCA and PRA
...	...
14.3.6	PRA
...	...
14.4.1	FCA and PRA
14.4.1A	FCA
14.4.1B	PRA
14.5.1	FCA and PRA
14.5.2	FCA and PRA
...	...
14.6.2	FCA and PRA
14.6.3	FCA and PRA
14.6.3A	FCA and PRA
14.6.3B	FCA and PRA
14.6.4	PRA
14.6.5	PRA
14.6.6	PRA
14.6.7	PRA
14.6.8	PRA
14.6.9	FCA and PRA

14.6.10	FCA and PRA
14.6.11	FCA
14.7.1	FCA and PRA
14.8.1	FCA and PRA

Appendix 13

Changes to Chapter 15 of the Supervision manual (SUP 15)

NOTIFICATIONS TO THE FCA OR PRA LEGAL CUTOVER INSTRUMENT 2012

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct 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 137A (The FCA’s general rules);
 - (2) section 137R (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purposes of section 138G (Rule-making instruments) of the Act.

Powers exercised by the Prudential Regulation Authority

- C. The Prudential Regulation 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 137E (The PRA’s general rules); and
 - (2) section 137R (General supplementary powers).
- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- E. This instrument comes into force on *[date]*.

Amendments to the Handbook

- F. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- G. This instrument may be cited as the Notifications to the FCA or PRA Legal Cutover Instrument 2012.

By order of the Board of the Financial Conduct Authority
[date]

By order of the Board of the Prudential Regulation Authority
[date]

Annex

Amendments to the Supervision manual (SUP)

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

15 Notifications to the ~~FSA~~ FCA or PRA

...

15.2 Purpose

...

15.2.3 G *Rules and guidance* have also been included to set out how *firms* should make a notification and to determine when it may be appropriate to discuss matters with their usual supervisory contact at the *appropriate regulator* by telephone (SUP 15.7).

[FCA/
PRA]

...

15.2.5 G Where a *PRA-authorized person* is required to notify (a) the *appropriate regulator* by a *PRA Handbook* provision and (b) the *FCA* by the equivalent provision in the *FCA Handbook*, the *PRA-authorized person* is expected to comply with both provisions.

[PRA]

...

15.3 General notification requirements

Matters having a serious regulatory impact

...

15.3.6[P G An *insurer* or *friendly society* making a notification under SUP 15.3.1R(1) relating to satisfaction of the business to be conducted in a prudent manner threshold conditions ~~4 (Adequate resources)~~ should be aware of the requirements in SUP App 2 (Scheme of operations).

[P
RA]

...

15.5 Core information requirements

...

Submitting notifications to the ~~FSA~~ appropriate regulator

- 15.5.9[F
CA/
PRA] R (1) A *firm* other than a *credit union* must submit any notice under SUP 15.5.1R, SUP 15.5.4R, and SUP 15.5.5R ~~and SUP 15.5.7R~~ by submitting the form in SUP 15 Ann 3R online at ~~www.fsa.gov.uk~~ [web address to be inserted].
- (2) ...
- (3) Where a *firm* is obliged to submit a notice online under (1), if the ~~FSA's~~ appropriate regulator's information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit any notice under SUP 15.5.1R, SUP 15.5.4R, and SUP 15.5.5R ~~and SUP 15.5.7R~~ in the form in SUP 15 Ann 3R and in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).
- (4) A *firm* must submit any notice under SUP 15.5.7R by submitting the form in SUP 15 Annex 4R in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

...

15.7 Form and method of notification

...

Method of notification

- 15.7.4 [FCA/
PRA] R Unless stated in the *notification rule*, or on the relevant form (if specified), a written notification required from a *firm* under any *notification rule* must be:
- (1) given to or addressed for the attention of the *firm's* usual supervisory contact at the ~~FSA~~ appropriate regulator; and
- (2) delivered to the ~~FSA~~ appropriate regulator by one of the methods in SUP 15.7.5R:

...

Underwriting agents: notification to the Society of Lloyd's

- 15.7.12 R (1) ~~Paragraph (2) applies in relation to notifications required under this chapter within the scope of any arrangements made by the FSA with the Society of Lloyd's under paragraph 6(2) of Schedule 1 to the Act.~~

[deleted]

- (2) ~~An underwriting agent must submit the notifications in (1) to the Society of Lloyd's rather than to the FSA. [deleted]~~

- 15.7.13 G ~~Paragraph 6(2) of Schedule 1 to the Act enables the FSA to make arrangements which provide for monitoring functions to be performed by any body or person who, in its opinion, is competent to perform them. Arrangements made under this provision are published by the FSA. [deleted]~~

...

15.8 Notification in respect of particular products and services

Management of occupational pension scheme assets

- 15.8.1 R A firm which manages the assets of an *occupational pension scheme* must
[FCA] notify the ~~FSA~~ FCA as soon as reasonably practicable if it receives any request or instruction from a trustee which it:

...

Individual Pension Accounts

- 15.8.2 R If a firm begins or ceases to administer *individual pension accounts*, it must
[FCA] notify the ~~FSA~~ FCA as soon as reasonably practicable that it has done so.

Insurers' commission clawback

- 15.8.3 R (1) An insurer must notify the ~~FSA~~ FCA in respect of any firm (the
[FCA] "intermediary") as soon as reasonably practicable if:

...

...

Money service business and trust or company service providers

- 15.8.4 G (1) In accordance with article 31 of the *Money Laundering Regulations*,
[FCA] with effect from 15 December 2007, a firm is required to notify the ~~FSA~~ FCA:

...

...

- 15.8.5 G A firm which is already operating a money service business or a trust or
[FCA] company service provider as at 15 December 2007 is required by the *Money Laundering Regulations* to notify the ~~FSA~~ FCA of that fact and should do so

in the manner specified in *SUP* 15.8.4G(2) before 15 January 2008.

Delegation by UK UCITS management companies

- 15.8.6 R If a *UK UCITS management company* intends to delegate to a third party any
[FCA] one or more of its functions for the more efficient conduct of its business, it must first inform the ~~FS~~ FCA in an appropriate manner.

[**Note:** article 13(1)(a) of the *UCITS Directive*]

...

CTF providers

- 15.8.8 R (1) If a *firm* begins or ceases to hold itself out as acting as a *CTF*
[FCA] *provider*, it must notify the ~~FS~~ FCA as soon as reasonably practicable that it has done so.
- (2) A *firm* that acts as a *CTF provider* must provide the ~~FS~~ FCA, as soon as reasonably practicable, with details of:

...

- 15.8.9 R A *BIPRU firm* must report to the ~~FS~~ appropriate regulator immediately
[FCA/
PRA] any case in which its counterparty in a *repurchase agreement* or *reverse repurchase agreement* or *securities or commodities lending or borrowing transaction* defaults on its obligations.

...

15.10 Reporting suspicious transactions (market abuse)

...

Notification of suspicious transactions: general

- 15.10.2 R A *firm* which *arranges* or *executes* a transaction with or for a client in a
[FCA] *qualifying investment* admitted to trading on a *prescribed market* and which has reasonable grounds to suspect that the transaction might constitute *market abuse* must notify the ~~FS~~ FCA without delay.

[**Note:** Article 6(9) *Market Abuse Directive*]

Notification of suspicious transactions: investment firms and credit institutions

...

- 15.10.4 G (1) Notification of suspicious transactions to the ~~FS~~ FCA requires
[FCA] sufficient indications (which may not be apparent until after the transaction has taken place) that the transaction might constitute *market abuse*. In particular a *firm* will need to be able to explain the

basis for its suspicion when notifying the *FSA FCA* (see *SUP* 15.10R). Certain transactions by themselves may seem completely devoid of anything suspicious, but might deliver such indications of possible *market abuse*, when seen in perspective with other transactions, certain behaviour or other information (though *firms* are not expected to breach effective information barriers put in place to prevent and avoid conflicts of interest so as actively to seek to detect suspicious transactions). [**Note:** Recital 9 2004/72/EC]

...

...

Content of notification: investment firms and credit institutions

15.10.6 R (1) If an *investment firm* or a *credit institution* is obliged to make a notification to the *FSA FCA* under this section, it must transmit to the *FSA FCA* the following information:

[FCA]

...

(2) In addition the following information must be provided to the *FSA FCA* as soon as it becomes available:

...

Means of notification: investment firms and credit institutions

15.10.7 R An *investment firm* or a *credit institution* making a notification to the *FSA FCA* under this section may do so:

[FCA]

(1) by mail to:
~~Market Conduct Team~~
~~25 The North Colonnade~~
~~Canary Wharf~~
~~London E14 5HS~~ [address to be confirmed]; or

(2) by electronic mail to market.abuse@fsa.gov.uk [email address to be confirmed];

(3) by facsimile to the ~~Market Conduct Team~~ on ~~020 7066 1099~~ [fax contact details to be confirmed]; or

(4) by telephone to the market abuse helpline ~~020 7066 4900~~ [to be confirmed]. [**Note:** Article 10 2004/72/EC]

15.10.8 G (1) If a notification is made by telephone, the *FSA FCA* may subsequently request confirmation of the notification in writing. [**Note:** Article 10 2004/72/EC]

[FCA]

(2) When making a notification in writing it may be convenient to use the form for suspicious transaction reports provided on the *FSA's FCA's*

website. This form follows the common standard approved by ESMA (formerly known as CESR).

Liability and professional secrecy: investment firms and credit institutions

- 15.10.9 R (1) An *investment firm* or a *credit institution* which notifies the ~~FSA~~ FCA [FCA] under this section must not inform any other *person*, in particular the *persons* on behalf of whom the transaction has been carried out or parties related to those persons, of this notification, except in accordance with an obligation imposed by or under statute.
- (2) Notwithstanding any other provision of the *Handbook* a notification in good faith under this section to the ~~FSA~~ FCA does not constitute a breach of any restriction on disclosure of information imposed by the *Handbook*. [Note: Article 11 2004/72/EC]

Note: Section 131A of the *Act* sets out additional protections from liability for a *person* who makes a notification to the ~~FSA~~ FCA under this section (or who passes the relevant information to someone designated by his employer to do so).

15 Annex 1 Application of SUP 15 to incoming EEA firms and incoming Treaty firms

[FCA/
PRA]

- R 1 . SUP 15 applies in full to an *incoming EEA firm*, or *incoming Treaty firm* , which has a *top-up permission*.
- 2 . ~~SUP 15 does not apply to an *incoming EEA firm* which has *permission for cross border services only* and which does not carry on *regulated activities in the United Kingdom*. [deleted]~~
- 2 A ~~SUP 15 does not apply to an *EEA pure reinsurer* which does not have a *top-up permission*. [deleted]~~
- 3 . For any other *incoming EEA firm* or *incoming Treaty firm*, SUP 15 applies as set out in the following table.

Applicable sections		Application
...		
SUP 15.3.7G to SUP 15.3.10G	Communication with the FSA <u>appropriate regulator</u> in accordance with Principle 11	Apply in so far as responsibility for the matter in question is not reserved by an <i>EU</i> instrument to the

		<i>firm's Home State regulator</i>
...		

15
Annex 1A
[FCA]

1. SUP 15 does not apply to an incoming EEA firm which has permission for cross border services only and which does not carry on regulated activities in the United Kingdom.
2. SUP 15 does not apply to an EEA pure reinsurer which does not have a top-up permission.

...

Appendix 14

Designation of changes to SUP 15

Appendix 14: Designation of changes to SUP 15

Handbook Provision	Designation
...	...
SUP 15.2.3	PRA and FCA
...	...
SUP 15.2.5	PRA
...	...
SUP 15.3.6	PRA
...	...
SUP 15.5.9	PRA and FCA
...	...
SUP 15.7.4	PRA and FCA
...	...
SUP 15.8.1	FCA
SUP 15.8.2	FCA
SUP 15.8.3	FCA
SUP 15.8.4	FCA
SUP 15.8.5	FCA
SUP 15.8.6	FCA
...	..
SUP 15.8.8	FCA
SUP 15.8.9	PRA and FCA
...	...
SUP 15.10.2	FCA
...	...

SUP 15.10.4	FCA
...	...
SUP 15.10.6	FCA
SUP 15.10.7	FCA
SUP 15.10.8	FCA
SUP 15.10.9	FCA
SUP 15 Annex 1	PRA and FCA
SUP 15 Annex 1A	FCA
...	...

Appendix 15

Changes to Chapter 16 of the Supervision manual (SUP 16)

REPORTING REQUIREMENTS LEGAL CUTOVER INSTRUMENT 2012

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct 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 137A (The FCA’s general rules);
 - (2) section 137R (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purposes of section 138G (Rule-making instruments) of the Act.

Powers exercised by the Prudential Regulation Authority

- C. The Prudential Regulation 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 137E (The PRA’s general rules); and
 - (2) section 137R (General supplementary powers).
- D. The rule-making powers listed above are specified for the purposes of section 138G (Rule-making instruments) of the Act.

Commencement

- E. This instrument comes into force on *[date]*.

Amendments to the Handbook

- F. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- G. This instrument may be cited as the Reporting Requirements Legal Cutover Instrument 2012.

By order of the Board of the Financial Conduct Authority
[date]

By order of the Board of the Prudential Regulation Authority
[date]

Annex

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

16.1 Application

...

16.1.7 [FCA/ PRA] G Where a PRA-*authorised person* is required to notify or provide any information to (a) the *appropriate regulator* by a PRA Handbook provision and (b) the FCA by the equivalent provision in the FCA Handbook, the PRA-*authorised person* is expected to comply with both provisions.

16.2 Purpose

16.2.1 [FCA/ PRA] G (1) In order to discharge its functions under the *Act*, the *FSA appropriate regulator* needs timely and accurate information about *firms*. The provision of this information on a regular basis enables the *FSA appropriate regulator* to build up over time a picture of *firms'* circumstances and behaviour.

(2) *Principle 11* requires a *firm* to deal with its regulators in an open and cooperative way, and to ~~tell~~ disclose to the FSA appropriate regulator appropriately anything relating to the firm of which the *FSA appropriate regulator* would reasonably expect notice. The reporting requirements are part of the *FSA's appropriate regulator's* approach to amplifying *Principle 11* by setting out in more detail the information that the *FSA appropriate regulator* requires. They supplement the provisions of *SUP 2* (Information gathering by the ~~FSA~~FCA or PRA on ~~its~~ their own initiative) and *SUP 15* (Notifications to the ~~FSA~~FCA or PRA). The reports required under these *rules* help the *FSA appropriate regulator* to monitor *firms'* compliance with *Principles* governing relationships between *firms* and their *customers*, with *Principle 4*, which requires *firms* to maintain adequate financial resources, and with other requirements and standards under the *regulatory system*.

...

16.3 General provisions on reporting

...

Complete reporting

- 16.3.11 R A *firm* must submit reports required under this chapter to the *FSA appropriate regulator* containing all the information required.
[FCA/
PRA]
- 16.3.12 G *SUP* 15.6 refers to and contains requirements regarding the steps that *firms* must take to ensure that information provided to the *FSA appropriate regulator* is accurate and complete. Those requirements apply to reports required to be submitted under this chapter.
[FCA/
PRA]

Timely reporting

- 16.3.13 R (1) A *firm* must submit a report required by this chapter in the frequency, and so as to be received by the *FSA appropriate regulator* no later than the due date, specified for that report.
[FCA/
PRA]
- (2) If the due date for submission of a report required by this chapter falls on a day which is not a *business day*, the report must be submitted so as to be received by the *FSA appropriate regulator* no later than the first *business day* after the due date.

...

Failure to submit reports

...

- 16.3.14A G Failure to submit a report in accordance with the *rules* in, or referred to in, this chapter or the provisions of relevant legislation may also lead to the imposition of a financial penalty and other disciplinary sanctions (~~see DEPP 6.6.1G—DEPP 6.6.5G~~). A *firm* may be subject to reporting requirements under relevant legislation other than the *Act*, not referred to in this chapter. An example of this is reporting to the *FSA appropriate regulator* by *building societies* under those parts of the Building Societies Act 1986 which have not been repealed (see *SUP* 16.1.4G). If it appears to the *FSA appropriate regulator* that, in the exceptional circumstances of a particular case, the payment of any fee would be inequitable, the *FSA appropriate regulator* may reduce or remit all or part of the fee in question which would otherwise be payable (see *FEES* 2.3).
[FCA/
PRA]
- 16.3.15 G The *FSA appropriate regulator* may from time to time send reminders to *firms* when reports are overdue. *Firms* should not, however, assume that the *FSA appropriate regulator* has received a report merely because they have not received a reminder.
[FCA/
PRA]

...

Change of accounting reference date

- 16.3.17 R (1) A *firm* must notify the *FSA the appropriate regulator* if it changes its

[FCA/
PRA]*accounting reference date.*

...

- (4) ~~SUP 16.10.4AR to SUP 16.10.4CG (Method of reporting Requirement to check the accuracy of standing data and to report changes to the FSA appropriate regulator changes in standing data)~~ apply to any notification made under (1).

16.3.18
[FCA/
PRA]

- G *SUP 16.2.1G emphasises the importance to the FSA appropriate regulator of timely and accurate information. The extension of a firm's accounting period to more than 15 months may hinder the timely provision of relevant and important information to the FSA appropriate regulator. This is because many due dates for reporting to the FSA appropriate regulator are linked to firms' accounting reference dates. Indeed, for some categories of firm, the only reports required by the FSA appropriate regulator have due dates for submission which are linked to the firm's accounting reference date. If the extension of a firm's accounting period appears likely to impair the effectiveness of the FSA's appropriate regulator's supervisory work, the FSA appropriate regulator may take action to ensure that it continues to receive the information it requires on a timely basis. This may include the use of any of the tools of supervision set out in SUP 1.4.5G.*

16.3.19
[FCA/
PRA]

- G *If more than one firm in a group intends to change its accounting reference date at the same time, a single notification may be given to the FSA appropriate regulator, as described in SUP 15.7.8G.*

~~Underwriting agents: submission to the Society of Lloyd's~~

16.3.20

- R (1) ~~Paragraph (2) applies in relation to reports required under this chapter within the scope of any arrangements made by the FSA with the Society of Lloyd's under paragraph 6(2) of Schedule 1 to the Act. [deleted]~~
- (2) ~~An underwriting agent must submit the reports in (1) to the Society of Lloyd's rather than to the FSA. [deleted]~~

16.3.21

- G ~~See SUP 15.7.13G and SUP 15.7.14G for guidance on arrangements in SUP 16.3.20R. [deleted]~~

Service of Notices Regulations

16.3.22
[FCA/
PRA]

- G *The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) contain provisions relating to the service of documents on the FSA appropriate regulator. They do not apply to reports required under SUP 16, because of the specific rules in this section.*

Confidentiality and sharing of information

16.3.23
[FCA/

- G *When the FSA appropriate regulator receives a report which contains confidential information and whose submission is required under this chapter,*

PRA] it is obliged under Part XXIII of the Act (Public Record, Disclosure of Information and Co-operation) to treat that information as confidential. (See *SUP 2.2.4G*)

16.3.24 [FCA/
PRA] G *SUP 2.3.12G* states that the *FSA appropriate regulator* may pass to other regulators information which it has in its possession. Such information includes information contained in reports submitted under this chapter. The *FSA's appropriate regulator's* disclosure of information to other regulators is subject to *SUP 2.2.4G* (Confidentiality of information).

Reports from groups

...

16.3.26 [FCA/
PRA] G Examples of reports covering a *group* are:

- (1) ...
- (2) annual controllers reports required under *SUP 16.5.4 16.4.5R*;
- (3) ...
- (4) ~~consolidated financial reports required from *banks* under *SUP 16.7.7R*; [deleted]~~
- (5) ~~consolidated reporting statements required from *securities and futures firms* under *SUP 16.7.24R*; [deleted]~~
- (6) ...

16.4 Annual controllers report

...

Purpose

16.4.4 [FCA/
PRA] G A *firm* and its *controllers* are required to notify certain changes in *control* (see *SUP 11* (Controllers and close links)). The purpose of the *rules and guidance* in this section is:

- (1) to ensure that, in addition to such notifications, the *FSA appropriate regulator* receives regular and comprehensive information about the identities of all of the *controllers* of a *firm*, which is relevant to a *firm's* continuing to satisfy the effective supervision threshold conditions (see *COND 2.3*) ;
- (2) ...

- (3) to support the *FSA's* regulatory functions under Part XII of the *Act* (Notices of acquisitions of control over UK authorised persons) (see *SUP* 11 (Controllers and close links)).

Reporting requirement

16.4.5
[FCA/
PRA]

- R (1) A *firm* must submit a report to the *FSA appropriate regulator* annually, containing the information in (3) or (4) (as applicable).
- (2) A *firm* must submit the report in (1) to the *FSA appropriate regulator* within four months of the *firm's accounting reference date*.
- ...
- (4A) A *firm* that is a *regulated entity* must include in its report to the *FSA appropriate regulator* under (1) whether any *consolidation group* of which it is a member is a *third-country banking and investment group*.
- (4B) A *firm* does not have to give notice to the *FSA appropriate regulator* under (4A) if it, or another member of the *third-country banking and investment group*, has already given notice to the *FSA appropriate regulator* of the relevant fact.
- ...

...

16.5 Annual Close Links Reports

...

Purpose

16.5.2

[PRA/FC
A]

- G A *firm* is required to notify the *FSA appropriate regulator* of changes to its *close links* (see *SUP* 11.9). The effective supervision ~~Threshold~~ threshold conditions 3 (Close links) provides that, if a *firm* has *close links* with another *person*, ~~the *FSA* must be satisfied that~~ the matters which are relevant in determining whether a *firm* satisfies the condition of being capable of being effectively supervised include:
- (1) ~~those *close links* are not likely to prevent the *FSA's* effective supervision of the *firm*; and~~ the nature of the relationship between the *firm* and that *person*;
- (2) ~~where it appears to the *FSA* that the *person* is subject to the laws, regulations or administrative provisions of a territory which is not an *EEA State*, neither the foreign provisions, nor any deficiency in their enforcement, would prevent the *FSA's* effective supervision of the~~

~~*firm*~~. whether those links or that relationship are likely to prevent the appropriate regulator's effective supervision of the *firm*; and

- (3) if the *person* is subject to the laws, regulations or administrative provisions of a territory which is not an *EEA State*, whether those foreign provisions, or any deficiency in their enforcement, would prevent the appropriate regulator's effective supervision of the *firm*.

16.5.3
[FCA/
PRA]

G The purposes of the *rules* and *guidance* in this section are:

- (1) to ensure that, in addition to such notifications, the *FSA appropriate regulator* receives regular and comprehensive information about the identities of all persons with whom a *firm* has *close links*, which is relevant to a *firm's* continuing to satisfy the effective supervision threshold conditions 3 ~~(Close links)~~ (see *SUP* 2.3) and to the protection of *consumers*; and
- (2) to implement certain requirements relating to the provision of information on *close links* which must be imposed on *firms* under the '*Post-BCCI Directive*'.

Report

16.5.4
[FCA/
PRA]

- R (1) A *firm* must submit a report to the *FSA appropriate regulator* annually by completing the Close Links Notification Form (see *SUP* 11.9.3AG) and must include the information in (3) or (4) (as applicable) and (5).
- (2) A *firm* must submit the report in (1) to the *FSA appropriate regulator* within four months of the *firm's* *accounting reference date*.

...

...

16.6 Compliance reports

...

Purpose

16.6.3

- G ~~The *FSA* performs part of its supervision work by reviewing and analysing information about *firms'* records of compliance with the requirements and standards under the *regulatory system*. The type of report the *FSA* requires will vary, depending on the type of business a *firm* undertakes. The requirements in *SUP* 16.6 represent an interim approach to compliance reporting, based mainly on the reporting requirements, which *previous regulators* applied to *firms*. This information helps the *FSA* to determine~~

~~whether a *firm* is complying with the requirements applicable to its business, and what procedures it is operating to ensure its compliance. [deleted]~~

16.6.3A [FCA] G The *FCA* performs part of its supervision work by reviewing and analysing information about *firms'* records of compliance with the requirements and standards under the *regulatory system*. The type of report the *FCA* requires will vary, depending on the type of business a *firm* undertakes. This information helps the *FCA* to determine whether a *firm* is complying with the requirements applicable to its business, and what procedures it is operating to ensure its compliance.

16.6.3B [PRA] G The *PRA* performs part of its supervision work by reviewing and analysing information about *firms'* records of compliance with prudential requirements and standards. The type of report the *PRA* requires will vary, depending on the type of business a *firm* undertakes. This information helps the *PRA* to determine whether a *firm* is complying with the requirements applicable to its business, and what procedures it is operating to ensure its compliance.

...

16.8 Persistence reports from insurers and data reports on stakeholder pensions

...

Requirement to submit persistency and data reports

16.8.3 [FCA] R (1) *An insurer with permission to effect or carry ~~out~~life out life policies must submit to the ~~FSA~~ FCA a persistency report in respect of life policies by 30 April each year in accordance with this section.*

(2) *A firm with permission to establish, operate or wind up a stakeholder pension scheme must submit to the ~~FSA~~ FCA:*

...

...

16.9 Appointed representatives annual report

...

Purpose

16.9.2 [FCA] G The purpose of the *rules and guidance* in this section is to ensure that, in addition to the notifications made under *SUP 12.7* (Appointed representatives; notification requirements), the ~~FSA~~ *FCA* receives regular and comprehensive information about the *appointed representatives* engaged by a *firm*, so that the ~~FSA~~ *FCA* is in a better position to pursue the ~~regulatory~~

~~objective~~ statutory objective of the protection of *consumers*.

- 16.9.3 [FCA] R (1) A *firm* must:
- (a) submit a report to the ~~FSA~~ FCA annually, in the form of an amended copy of the relevant extract from the ~~FSA Register~~ FCA Register, containing the information in (2);
 - (b) submit the report in (1) to the ~~FSA~~ FCA within four *months* of the ~~firm's accounting~~ firm's accounting reference date.
- (2) The report in (1) must contain a list of all the current *appointed representatives* of the *firm* as at the ~~firm's accounting~~ firm's accounting reference date.
- (3) The report in (1) is not required if:
- (a) ...
 - (b) this is reflected in the relevant extract from the ~~FSA Register~~ FCA Register.
- 16.9.4 [FCA] G The ~~FSA Register~~ FCA Register is maintained under section 347 of the *Act* (The record of authorised persons, etc.) and may be viewed at the ~~FSA's~~ website at www.fsa.gov.uk/register/ [FCA web address to be confirmed].
- ...
- 16.9.6 [FCA] G If a group includes more than one *firm*, a single annual *appointed representatives* report may be submitted on behalf of all *firms* in the *group*. Such a report should contain the information required from all the *firms*, meet all relevant due dates, indicate all the *firms* on whose behalf it is submitted and give their ~~FSA~~ FCA Register firm reference numbers. The requirement to provide a report, and the responsibility for the report remains with each *firm* in the *group*.

16.10 Verification of standing data

...

Requirement to check the accuracy of standing data and to report changes to the ~~FSA~~ appropriate regulator

- 16.10.4 [FCA/PRA] R (1) Within 30 *business days* of its *accounting reference date*, a *firm* must check the accuracy of its *standing data* through the relevant section of the ~~FSA~~ appropriate regulator's website.
- (2) ...

- (3) If any *standing data* is incorrect, the *firm* must submit the corrected *standing data* to the *FSA appropriate regulator*, using the appropriate form set out in SUP 15 Ann 3R and in accordance with SUP 16.10.4AR.

...

- 16.10.5 [FCA/
PRA] G The *standing data* is made available to the *firm* when the *firm* logs into the appropriate section of the *FSA appropriate regulator's* website. The *firm* should check the *standing data* and send any corrections to the *FSA appropriate regulator*. The *FSA's appropriate regulator's* preferred method of receiving corrections to *standing data* is by the online forms available at the *FSA's appropriate regulator's* website.

...

16.12 Integrated Regulatory Reporting

...

Purpose

- 16.12.2 [FCA/
PRA] G (1) *Principle 4* requires *firms* to maintain adequate financial resources. The Interim Prudential sourcebooks, *PRU*, *BIPRU* and *GENPRU* set out the *FSA's appropriate regulator's* detailed capital adequacy requirements. By submitting regular data, *firms* enable the *FSA appropriate regulator* to monitor their compliance with *Principle 4* and their prudential requirements in the *FSA Handbook Handbook*.
- (2) The *data items* submitted help the *FSA appropriate regulator* analyse *firms'* financial and other conditions and performance and to understand their business. By means of further collation and review of the data which the *data items* provide, the *FSA appropriate regulator* also uses the *data items* to identify developments across the financial services industry and its constituent sectors.
- (3) The requirements in this section differ according to a *firm's regulated activity group (RAG)*, as different information is required to reflect different types of business. Standard formats are used for reporting, to assist compatibility between *firms* which carry on similar types of business. Timely submission is important to ensure the *FSA appropriate regulator* has up-to-date information.

...

Appendix 16

Designation of changes to SUP 16

Appendix 16: Designation of changes to SUP 16

Handbook Provision	Designation
...	...
SUP 16.1.7	PRA and FCA
SUP 16.2.1	PRA and FCA
...	...
SUP 16.3.11	PRA and FCA
SUP 16.3.12	PRA and FCA
SUP 16.3.13	PRA and FCA
SUP 16.3.14A	PRA and FCA
SUP 16.3.15	PRA and FCA
...	...
SUP 16.3.17	PRA and FCA
SUP 16.3.18	PRA and FCA
SUP 16.3.19	PRA and FCA
...	
SUP 16.3.22	PRA and FCA
SUP 16.3.23	PRA and FCA
SUP 16.3.24	PRA and FCA
...	...
SUP 16.3.26	PRA and FCA
...	...
SUP 16.4.4	PRA and FCA
SUP 16.4.5	PRA and FCA
...	...
SUP 16.5.2	PRA and FCA

SUP 16.5.3	PRA and FCA
SUP 16.5.4	PRA and FCA
...	...
SUP 16.6.3A	FCA
SUP 16.6.3B	PRA
...	...
SUP 16.8.3	FCA
...	...
SUP 16.9.2	FCA
SUP 16.9.3	FCA
SUP 16.9.4	FCA
...	...
SUP 16.9.6	FCA
...	...
SUP 16.10.4	PRA and FCA
SUP 16.10.5	PRA and FCA
...	...
SUP 16.12.2	PRA and FCA
...	...

Appendix 17

Changes to Chapter 18 of the Supervision manual (SUP 18)

TRANSFER OF BUSINESS LEGAL CUTOVER INSTRUMENT 2012

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of its powers under section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 (“the Act”).

Commencement

- B. This instrument comes into force on [*date*].

Amendments to the Handbook

- C. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the as the Transfer of Business Legal Cutover Instrument 2012.

Made by order of the Board of the Financial Conduct Authority
[*date*]

Made by order of the Board of the Prudential Regulation Authority
[*date*]

Annex

Amendments to the Supervision manual (SUP)

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

18 Transfers of business

18.1 Application

18.1.1 G This chapter provides *guidance* in relation to business transfers.

[FCA/
PRA]

- (1) *SUP* 18.2 applies to any *firm* or to any *underwriting member* or any *former 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. Some of the *guidance* in this chapter, for example, at *SUP* 18.2.31G to *SUP* 18.2.41G also ~~apply~~ applies to the *independent expert* making the *scheme report*.

...

- (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*~~ prudential regulator about an application for confirmation of an amalgamation or transfer.

Interpretation

18.1.1A G The 'prudential regulator' in this chapter means the regulator within the meaning of section 119 of the Friendly Societies Act 1992.

[FCA/
PRA]

18.1.1B G References to the 'regulator' and 'regulators' in this chapter means (respectively) either or both of the *PRA* and the *FCA*.

[FCA/
PRA]

18.1.1C G Reference to the 'Memorandum of Understanding' in this chapter is to the memorandum of understanding in force between the regulators under section 3E of the *Act*.

[FCA/
PRA]

18.1.2 G ~~*Guidance on building society* transfers and mergers is given in the Building Societies Regulatory Guide.~~ [deleted]

[FCA/
PRA]

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 2001/3625),~~ 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.

[FCA/
PRA]

(1) The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625), as amended by the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) (Amendment) Regulations 2008 (SI 2008/1467) and the Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008 (SI 2008/1468);

(2) the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001(SI 2001/3626), as amended by The Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) (Amendment) Order (2008/1725); and

(3) the Reinsurance Directive Regulations 2007 (SI 2007/3253) and the Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007 (SI 2007/3255).

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 *underwriting members* and *former 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 2001/3626). 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:~~

[FCA/
PRA]

(1) [deleted]

(a) the transferor is an "UK authorised person" and the business is being carried on in one or more EEA States; or [deleted]

(b) the business is reinsurance carried on in the United Kingdom; or [deleted]

(c) the business is carried on in the United Kingdom and the transferor is not an EEA firm; and [deleted]

- (2) ~~in each case, the transferred business will be carried on from an establishment in the EEA. [deleted]~~

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 [FCA/
PRA] G ~~In the opinion of the FSA~~ The regulators are likely to consider, a novation or a number of novations ~~would constitute as amounting to 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~~ If 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 [FCA/
PRA] 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.~~

...

- 18.1.8 [FCA/
PRA] G Legislation in respect of other transactions, for example, cross-border mergers, does not negate the requirements under Part VII of the *Act*. It is for the firms participating in such transactions to determine whether or not the proposed transfer gives rise to an insurance business transfer. The regulators expect firms proposing such transactions to discuss the proposal with them as soon as practicable.

18.2 Insurance business transfers

Purpose

- 18.2.1 [FCA/
PRA] G Transfers may 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*, without the consent of each ~~unless customers customer 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.

The regulators

- 18.2.1A [FCA/
PRA] G (1) Part VII of the *Act* prescribes certain statutory functions in relation to *insurance business transfer schemes* for both the *PRA* and the *FCA*. In accordance with the *Act*, the *PRA* and the *FCA* maintain a Memorandum of Understanding, which describes each regulator's role in relation to the exercise of its functions under the *Act* relating to matters of common regulatory interest and how each regulator intends to ensure the coordinated exercise of such functions. Under the Memorandum of Understanding, the *PRA* will lead the process for *insurance business transfers* and will be responsible for specific regulatory functions connected with Part VII applications, including the provision of certificates under section 111 of the *Act*. Further, the *PRA* will consult with the *FCA* both at the outset and throughout the *insurance business transfer* process. As such the scheme promoters should first approach the *PRA*, but should also consider whether any aspect of their proposals should be discussed with the *FCA* at an early stage. Scheme promoters should also consider SUP 18.2.13G.
- (2) By virtue of section 110 of the *Act* both the *PRA* and the *FCA* are entitled to be heard in the proceedings. The Memorandum of Understanding confirms that both the *PRA* and the *FCA* may provide the court with written representations setting out their views on the proposed transfer scheme, for example, by way of a report to the court. Each regulator will decide in relation to each *insurance business transfer* whether it is necessary or appropriate to prepare a report bearing in mind its objectives and other relevant matters.
- (3) As set out in the Memorandum of Understanding, before nominating or approving an *independent expert* under section 109(2)(b) of the *Act* or approving the form of a *scheme report* under section 109(3) the *PRA* will first consult the *FCA*. Further, where the *PRA* is the *appropriate regulator* it will consult appropriately with the *FCA* before approving the notices required under the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001(SI 2001/3625).
- 18.2.1B [FCA/
PRA] G In exercising its functions under the *Act*, each regulator will, so far as is reasonably possible, act in a way which is compatible with, and most appropriate for advancing, its *statutory objectives* as set out in the *Act* and will have regard to the regulatory principles in section 3B of the *Act*.
- 18.2.2 [FCA/
PRA] G The *FSA's regulatory objectives* include market confidence, financial stability and the protection of *consumers*. Any or all 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.~~[deleted]

- 18.2.3 [FCA/PRA] 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. [deleted]
- 18.2.4 [FCA/PRA] 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. [deleted]
- 18.2.5 [FCA/PRA] 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 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 A key concern then becomes to ensure that consumers have in this regard for each regulator will be to be satisfy itself that each consumer has appropriate adequate information and not set its judgement over theirs reasonable time within which to determine whether or not he is adversely affected and, if adversely affected, whether to make representations to the court.
- 18.2.6 [FCA/PRA] 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*).

[deleted]

- 18.2.7 [FCA/PRA] G For many transfers it is necessary to cooperate with *overseas regulators*. This section contains *guidance* on such cooperation. [deleted]
- 18.2.8 [FCA/PRA] 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. [deleted]
- 18.2.9 [FCA/PRA] 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*. [deleted]
- 18.2.10 [FCA/PRA] 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. [deleted]
- 18.2.11 [FCA/PRA] 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*. [deleted]

Procedure: initial steps

- 18.2.12 [FCA/PRA] 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* *appropriate regulator* as soon as reasonably practical, to enable the *FSA* regulators to consider what issues are likely to arise, and to enable a practical timetable for the scheme to be agreed established. 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 4A permission* or a variation of *permission* is necessary (*SUP 6* provides *guidance* on this); [deleted]
 - (2) seek information or approvals from other supervisors (where this applies); [deleted]
 - (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*; [deleted]
 - (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 [deleted]~~

- (5) ~~consider whether to object to the scheme in the light of the report and other circumstances. [deleted]~~

18.2.13 [FCA/
PRA] G The initial documentary information on the scheme ~~provided to the FSA under SUP 18.2.12G~~ should be provided to the PRA, who will share it with the FCA, and should include its broad outline and its purpose. ~~The FSA~~ Each regulator will may 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 [FCA/
PRA] G Under section 109(2) of the *Act* a *scheme report* may only be made by a *person*:

- (1) appearing to the *FSA* appropriate regulator to have the skills necessary to enable him to make a proper report; and
- (2) nominated or approved for the purpose by the *FSA* appropriate regulator.

18.2.14 A G The promoters should ensure that any relevant fees are paid before any application will be considered.
[FCA/
PRA]

18.2.15 [FCA/
PRA] 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 regulators expects~~ expect the *independent expert* making the *scheme report* to be a natural person, who:

...

...

18.2.20 [FCA/
PRA] 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 applicants should choose their nominee for *independent expert* in the light of any criteria advised by the *FSA* ~~and advise the FSA of their choice,~~ appropriate regulator. ~~The intended applicant/s should then advise the appropriate regulator of their choice,~~ unless the FSA appropriate regulator 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.~~ Relevant details provided should usually include information about the nominee's experience and qualifications; the proposed terms and conditions of the nominee's appointment, including any remuneration arrangements, and any current or previous professional or commercial arrangements with the transferor or transferee or their associated

companies, including the remuneration (direct or indirect) for those arrangements with the nominee and/or with any professional firm or company in which the nominee has or has had any interest.

18.2.21 G The *FSA* regulators may wish to have preliminary discussions with the nominee about the transfer ~~to help the *FSA* determine whether~~ before the appropriate regulator determines if he is suitably qualified to address issues arising from the transfer. The *FSA* regulators will consider the suitability of the nominee and the appropriate regulator will inform the firm that nominated him whether ~~if he has been approved~~ he has been approved ~~him~~. Since the nature of the scheme is a factor in determining the suitability of the nominee, the *FSA* appropriate regulator 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* appropriate regulator 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 ~~if the~~ appropriate regulator will inform the promoters of its nominee.

...

Consultation with EEA regulators and/or other foreign regulators

18.2.23 G Under the terms of the Memorandum of Understanding the *PRA* will lead
A when carrying out consultation with EEA regulators and/or other foreign
[FCA/ regulators.
PRA]

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*, the *Reinsurance Directive* and the associated agreements between *EEA regulators*. Schedule 12 of the *Act* implements some of these requirements.

18.2.25 G (1) 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* appropriate regulator has to consult the transferee's *Home State regulator*, who has 3 months to respond. It will be necessary for the *FSA* appropriate regulator 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.

(1A) If the transferee is (or will be) an *EEA firm* (authorised in its *Home State* to carry on *insurance business* under the *Reinsurance Directive*) it will be necessary for the appropriate regulator 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.

- (2) If the transferee is *authorised* in the *United Kingdom*, the *FSA appropriate regulator* will need to certify that the transferee will meet its solvency margin requirements after the transfer. If the *FSA appropriate regulator* has required of a *UK firm* a financial recovery plan of the kind mentioned in paragraph 1 of article 38 of the ~~Life Directive~~ Consolidated Life Directive (2002/83/EC) or paragraph 1 of article 20a of the *First Non-Life Directive*, or paragraphs 1 and 2 of article 43 of the *Reinsurance Directive*, the *FSA appropriate regulator* will not issue a certificate for so long as it considers that *policyholders'* rights are threatened within the meaning of ~~paragraph 1~~ these paragraphs.
- 18.2.26 G The transferor will need to provide the *FSA appropriate regulator* with the information that the *Home State regulator* requires from ~~FSA~~ the appropriate regulator. This information includes:
- ...
- (4) details of any guarantees (~~including~~ reinsurance arrangements), 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* of the business 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 appropriate regulator* will need to consult ~~its~~ the transferee's insurance supervisor in the place where the business is to be transferred. The *FSA appropriate regulator* 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* (other than a pure reinsurer) and the business to be transferred includes business carried on from a branch in another *EEA State*, then the *FSA appropriate regulator* has to consult the *Host State regulator*, who has 3 months to respond. The *FSA appropriate regulator* 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.
- 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 appropriate regulator* 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 appropriate regulator* must consult the *Host State regulator*. The *FSA appropriate regulator* 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 appropriate regulator will also need to have sufficient information about the business proposed to be transferred to be satisfied that the applicants have undertaken sufficient steps to identify the state of the risk or the state of the commitment as the case may be. The consent of the *Host State regulator* to the transfer is required, unless he does not respond within 3 months.

- 18.2.30 [FCA/
PRA] 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 appropriate regulator* 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 appropriate regulator* 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 [FCA/
PRA] 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 appropriate regulator*. The appropriate regulator would generally expect a *scheme report* to contain at least the information specified in SUP 18.2.33G before giving its approval ~~The *FSA* would not expect to approve the form of a *scheme report* that complies. SUP 18.2.32AG and SUP 18.2.34AG to SUP 18.2.41AG provide additional guidance for the *independent expert*.~~

- 18.2.31 A [FCA/
PRA] G When the *appropriate regulator* has approved the form of a *scheme report*, the scheme promoter may expect to receive written confirmation to that effect from that regulator.

- 18.2.32 [FCA/
PRA] G There may be matters relating to the scheme or the parties to the transfer that the ~~*FSA wishes regulators*~~ wish to draw to the attention of the *independent expert*. The ~~*FSA regulators*~~ may also wish the report to address particular issues. The *independent expert* should therefore contact the ~~*FSA regulators*~~ at an early stage to establish whether there are any such matters or issues. The *independent expert* should form his own opinion on any such issues, which may differ from the opinion of the ~~*FSA regulators*~~.

- 18.2.33 [FCA/
PRA] G The *scheme report* should comply with the applicable rules on expert evidence and contain the following information:

...

- (2) confirmation that the *independent expert* has been approved or nominated by the *FSA appropriate regulator*;

- (3) a statement of the independent expert's professional qualifications and (where appropriate) descriptions of the experience that fits him for the role;

...

- (11A) his opinion on the likely effects of the scheme on any reinsurer of a transferor, any of whose contracts of reinsurance are to be transferred by the scheme;

...

- 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 [FCA/ PRA] on it by *policyholders*, by reinsurers, by others affected by the scheme and by the FSAs regulators. 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.~~

...

- 18.2.40 G Where the transfer forms part of a wider chain of events or corporate [FCA/ PRA] 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 [FCA/ PRA] *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~~ Each regulator would wish to consider ~~the fairness of any such reduction~~ against its statutory objectives and section 113 allows the court on the application of either regulator to appoint an independent *actuary* to report ~~to the FSA~~ on any such

post-transfer reduction in benefits.

Notice provisions

18.2.42 [FCA/
PRA] G Under the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625), unless the court directs otherwise, notice of the application must be sent to all policyholders of the parties and reinsurers (or a person acting on its behalf) any of whose contracts of reinsurance are proposed to be transferred as part of the insurance business transfer scheme.

It may also be appropriate to give notice to others affected, ~~in particular~~ for example, 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 [FCA/
PRA] 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: accordance with requirements in those regulations.
 - (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 [FCA/
PRA] G The regulations referred to in SUP 18.2.42G require that the *FSA appropriate regulator* approves in advance the notices sent to *policyholders* and published in the press.

18.2.45 [FCA/
PRA] G Where a transfer involves underwriting members of Lloyd's as transferor or transferee, any notice requirements of the *Society* will also apply.

18.2.46 [FCA/
PRA] G The FSA regulators ~~is~~ are entitled to be heard by the court on any application for a transfer. A consideration for the FSA regulators in determining whether to oppose a transfer would be ~~its~~ their view on whether adequate steps had been taken to tell policyholders and, as appropriate, other affected persons, about the transfer and whether they had adequate information and time to consider it. The FSA regulators 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 ~~from the court for~~ a waiver of the publication requirements or the requirement to send statements direct to *policyholders*, to consult the *FSA regulators* on ~~its~~ their views about what waivers might be appropriate and what substitute arrangements might be made. The *FSA regulators* 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.~~

...

Statement to policyholders

...

18.2.49 G Where the transferee is a *friendly society*, the notice should include
[FCA/ information about the meeting at which a special resolution in accordance
PRA] 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 appropriate regulator* whether the special resolution has been passed. The court will also need to be informed, so ~~an~~ one appropriate way of informing the *FSA appropriate regulator* may be to include it in the affidavit to the court.

18.2.50 G The *FSA regulators* should be given the opportunity to comment on the
[FCA/ statement referred to in SUP 18.2.48G before it is sent, unless ~~the FSA has~~
PRA] informed the promoters have been informed in writing that ~~it does not wish to do so~~ this is not necessary.

~~FSA assessment~~ Assessment of scheme and the regulators' report(s) to the court

18.2.51 G The assessment is a continuing process, starting when the scheme promoters
[FCA/ first approach the *FSA appropriate regulator* about a proposed scheme. Each
PRA] regulator will have an interest in assessing the scheme. Among the considerations that may be relevant to both the depth of consideration ~~given~~ each gives to, and ~~the FSA's~~ each regulator's opinion on, a scheme are:

- (1) the potential risk posed by the transfer to ~~the regulatory objectives~~ its statutory objectives;

...

- (4) how the scheme compares with possible alternatives, particularly those that do not require approval (whether by the court or the ~~FSA~~ appropriate regulator);

...

- (6A) how any reinsurer of a transferor, any of whose contracts of reinsurance are to be transferred by the scheme may be affected;

- (7) how for other *persons* (besides *policyholders* and *reinsurers*) who have an interest in *policies*, their rights and the security of those rights appear to be affected;

- (8) the opportunity given to *policyholders* and other *persons affected by the scheme* 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;

...

- (10) for a transfer that involves *underwriting members* or *former members* of Lloyd's as transferor or transferee, the effect on the *Society*;

...

- (12) any views expressed by *policyholders*, *reinsurers* or any other affected parties.

18.2.52 G The *scheme report* will be an important factor in the view ~~the FSA~~ each of the regulators forms on a scheme. ~~The FSA will place considerable reliance~~ Considerable reliance will be placed on the opinions of the *independent expert* and the reasons for them. However ~~it~~ each regulator will form its own view taking into account other relevant information and having regard to its ~~regulatory~~ statutory objectives.

[FCA/
PRA]

18.2.53 G The ~~FSA~~ regulators are likely to object to a scheme if ~~it~~ they ~~concludes~~ conclude 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~~ regulators considers to be adequate, 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 2006.~~ 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

[FCA/
PRA]

~~the FSA's concerns. Scheme promoters should keep the FSA informed to allow this discussion.~~

- 18.2.53 A [FCA/PRA] G If at any time the regulators, or either of them, conclude that *policyholders* and/or as appropriate other relevant affected persons have not had adequate information and/or sufficient time to consider information they will seek to resolve such issues with the scheme promoters. This may require further notification. If either regulator remains unsatisfied that such *policyholders* and/or other persons have received adequate information and sufficient time to consider it they are likely to object to a transfer.
- 18.2.54 [FCA/PRA] G ~~The FSA~~ Either regulator may exercise its other powers under the *Act*, if it considers this a more effective method of ~~achieving its regulatory objectives~~ advancing its statutory objectives.
- 18.2.55 [FCA/PRA] G ~~The FSA~~ Neither regulator is ~~not~~ required under its ~~regulatory~~ statutory 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~~ either regulator might require a *firm* to consider or to implement an alternative scheme.
- 18.2.56 [FCA/PRA] G Where a transfer involves *underwriting members* or *former members* of Lloyd's as transferor or transferee, the ~~FSA~~ appropriate regulator 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 [FCA/PRA] 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~~ appropriate regulator. ~~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.~~
- 18.2.57 A [FCA/PRA] G The provision of reports from one or other (or both) regulators to assist the court is common practice. In most cases, a first report will be provided to the court in advance of the directions hearing and a second report will be provided to the court in advance of the final hearing. Where additional information needs to be given to the court by either regulator, this will be provided using the most appropriate format for the circumstances in each case and may include the provision of one or more additional reports to the court.
- 18.2.57 B G When assessing a proposed scheme under Part VII of the *Act* each regulator will, taking into account all relevant matters in each case, consider whether it

- [FCA/
PRA] should provide a report to the court. As it will lead the Part VII process for insurance business transfers, the PRA will usually provide such a report.
- 18.2.57 G In order to enable each of the regulators to assess the scheme and to facilitate the process, the parties to the proposed scheme will need to ensure timely provision of all relevant information to each regulator for its consideration of that scheme.
C
[FCA/
PRA]
- 18.2.57 G In relation to the matters at SUP 18.2.57AG to SUP 18.2.57CG above and to facilitate the provision to the court of a first report in advance of a directions hearing, near final versions of relevant documents will need to be made available to each of the regulators as soon as practicable. Scheme promoters should be aware that where such documents are produced less than 6 weeks before the date set for the hearing the regulators will be less likely to be in a position to complete their assessment in advance of the hearing. Final versions of any such documents should be provided as soon as they are available.
D
[FCA/
PRA]
- 18.2.57 G Relevant documents in SUP 18.2.57DG above will usually include:
E
[FCA/
PRA]
- (1) the scheme report;
 - (2) if the business to be transferred includes long-term insurance business, copies of reports on the transfer by the actuarial function holder and (if the insurance business includes with-profits business) the with-profits actuary of both firms;
 - (3) draft notices under article 3 of the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) Regulations 2001(SI 2001/3625), as amended by the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) (Amendment) Regulations 2008 (SI 2008/1467) and the Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008 (SI 2008/1468);
 - (4) where a proposed transfer involves an underwriting member or former underwriting member of the Society as transferor or transferee, a copy of the resolution or certificate required by article 4 of the Financial Services and Markets Act 2000(Control of Transfers of Business Done at Lloyd's) Order 2001 (SI 2001/3626), as amended by the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) (Amendment) Order 2008 (SI 2008/1725);
 - (5) any witness statements or other evidence which the parties to the proposed transfer intend to submit to the court for the directions hearing;

- (6) the draft order.
- 18.2.57 G Matters included at SUP 18.2.57EG(5) should include sufficient information
 F to enable:
 [FCA/
 PRA]
- (1) the appropriate regulator to decide which other non-UK regulators must be consulted. This information should be provided to the appropriate regulator as soon as it is available;
- (2) the appropriate regulator to decide whether to approve the notices at SUP 18.2.57EG(3); and
- (3) each regulator to form an opinion on any matters arising in connection with press advertising and notifications including in relation to any waivers the parties to the proposed transfer intend to seek from the court under article 4 of those regulations.
- 18.2.57 G A copy of any order made at the directions hearing should be provided by the
 G applicant to the appropriate regulator as soon as it is available.
 [FCA/
 PRA]
- 18.2.57 G In relation to the matters at SUP 18.2.57A to SUP 18.2.57CG and to facilitate
 H the provision to the court of a second or final report in advance of the final
 [FCA/
 PRA] hearing, near-final versions of relevant documents will need to be made
available to each of the regulators as soon as practicable. Scheme promoters
should be aware that where such documents are produced less than 6 weeks
before the date set for that hearing the regulators will be less likely to be in a
position to complete their assessment in advance of the hearing. Final
versions of any such documents should be provided as soon as they are
available.
- 18.2.58 G For ~~long term insurance business~~, the affidavit evidence to the court would
 [FCA/
 PRA] normally include copies of reports on the transfer by the ~~actuarial function~~
holder and (if the ~~insurance business~~ includes ~~with profits business~~) the ~~with~~
~~profits~~ ~~actuary~~ of both ~~firms~~, which should be provided to the FSA at an early
stage. SUP 4.3.17R (4) requires a ~~firm~~ to request the advice of its ~~with profits~~
~~actuary~~ about the likely effect of material changes in its business plans on the
rights and reasonable expectations of the relevant classes of its ~~with profits~~
~~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 ~~with profits~~
~~actuary~~. ~~[deleted]~~
- 18.2.58 G Relevant documents in SUP 18.2.57HG will usually include:
 A
 [FCA/
 PRA]

- (1) any witness statements or other evidence which the parties to the proposed transfer intend to submit to the court for the final hearing;
- (2) the notice or notices published and sent in accordance with the order of the court at SUP 18.2.57GG;
- (3) proof of publication of the notice or notices at (2);
- (4) any final and/or additional reports of the *independent expert*;
- (5) any objections or other representations received from *policyholders* and/or other affected persons together with any responses to any such objections or representations;
- (6) the draft final order.

- 18.2.59 G ~~The scheme promoters should advise the *FSA* about any material~~
[FCA/ representations made to them in response to the transfer scheme. Where it is
PRA] ~~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.~~
~~[deleted]~~
- 18.2.59 G Provided that any necessary consents have been obtained in respect of
A confidential information, where either regulator has made a report it will give
[FCA/ a copy of its report to the court and will give a copy of its report as filed with
PRA] the court to each of the parties to the proposed transfer as soon as practicable
after such filing.
- 18.2.59 G Provided that any necessary consents have been obtained in respect of
B confidential information, the parties to the proposed transfer should give a
[FCA/ copy of any report at SUP 18.2.59AG to the *independent expert*.
PRA]
- 18.2.59 G The parties to the proposed transfer should in each case consider whether it
C would facilitate the effective running of the process to give copies to any
[FCA/ other person including any person who alleges that he would be adversely
PRA] affected by the carrying out of the scheme and intends to be heard in
accordance with section 110 of the *Act*. Where any such provision is to be
made, any necessary consents should first be obtained in respect of
confidential information.
- 18.2.59 G The court is likely to wish to know the opinion of each of the regulators.
D Each regulator will decide in each case, taking all relevant matters into
[FCA/ account, the most effective method to make known to the court its opinion.
PRA]
- 18.2.59 G Where either regulator has indicated to the parties to the proposed transfer
E that it intends to appear at any hearing before the court in relation to a
[FCA/ proposed scheme under Part VII of the *Act* a copy set of the bundle of
PRA] documents filed with the court should be provided to it as soon as practicable.

Post-transfer advertising

- 18.2.60 G The court is likely to wish to know the *FSA's* opinion on the scheme and, if
[FCA/
PRA] 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. [deleted]
- 18.2.60 G Under section 114 of the *Act* the court must direct that notice of the transfer
A be published by the transferee in any *EEA State* other than the United
[FCA/
PRA] Kingdom which is the *state of the commitment* or the *state of the risk* as regards any policy included in the transfer which evidences a contract of insurance (other than a contract of reinsurance). The regulators would expect the transferee to publish notice in at least one national newspaper in each relevant *EEA State*. Such publication should include the notification of the transfer to the policyholders in the *state of the commitment* or the *state of the risk*. The parties should also be mindful of relevant provisions of the national laws of the relevant *state of the commitment* or the *state of the risk*.
- 18.2.60 G Under section 114A of the *Act* the court may direct that notice of a transfer
B be published by the transferee in any *EEA State* which is the *state of the*
[FCA/
PRA] *commitment* or the *state of the risk* as regards any policy included in the transfer which evidences a contract of *reinsurance*.

18.3 Insurance business transfers outside the United Kingdom

Purpose

- 18.3.1 G Under section 115 of the *Act*, the *FSA appropriate regulator* has the power to
[FCA/
PRA] 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 appropriate regulator* would exercise this power and on related matters.

FSA *Appropriate regulator* response to proposal

- 18.3.1A G Unless otherwise expressly stated by the *appropriate regulator*, all the
[FCA/
PRA] procedural aspects for dealing with *insurance business transfers* outside the *United Kingdom* should be discussed by firms with the *PRA* in the first instance.
- 18.3.2 G Under cooperation agreements between *EEA regulators*, if it has serious
[FCA/
PRA] concerns about the proposed transferee, the *FSA appropriate regulator* should inform the *regulatory body* of the transferor within 3 months of the original request from that *regulatory body*. The *FSA appropriate regulator* is not obliged to reply, but if it does not, its opinion is taken to be *favorable favourable*. Although the protocol does not apply to Switzerland, the *FSA*

appropriate regulator 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 [FCA/
PRA] G The information that the *regulatory body* of the transferor is required to supply will normally be sufficient for the ~~FSA~~ appropriate regulator to determine whether the transfer is likely to have a material effect on the transferee.
- 18.3.4 [FCA/
PRA] G If the effect of the transfer is not likely to be material and the ~~FSA~~ appropriate regulator does not already have serious concerns about the transferee, the ~~FSA~~-appropriate regulator can reply ~~favorably~~ favourably.
- 18.3.5 [FCA/
PRA] G If the effect of the transfer may be material, the ~~FSA~~-appropriate regulator 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~~-appropriate regulator should have serious concerns.
- 18.3.6 [FCA/
PRA] G If the effect of the transfer may have a material adverse effect on the transferee or the security of *policyholders*, the ~~FSA~~-appropriate regulator will consider whether it is appropriate to exercise its powers under the *Act* to achieve its ~~regulatory~~ statutory objectives.

18.4 Friendly Society transfers and amalgamations

...

General considerations

- 18.4.1A G In general, although the legislation governing transfers of engagements involves *friendly societies* is the Friendly Societies Act 1992, similar issues arise in these transfers as in *insurance business transfers* under Part VII of the *Act* and so the regulators would expect *firms* to be subject to a similar process followed under the *Act*. Accordingly, *firms* should usually first discuss the procedural aspects for dealing with *friendly society* transfers and amalgamations with the *PRA* as the prudential regulator. The *PRA* will consult the *FCA* as required by the Friendly Societies Act 1992 or as may otherwise appear to be appropriate.
[FCA/
PRA]
- 18.4.2 G *Friendly societies* are encouraged to discuss a proposed transfer or amalgamation with the *FSA* prudential regulator, at an early stage to help ensure that a workable timetable is developed. *Friendly societies* should also consider at the outset whether early consultation with the *FCA* is desirable. 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.
[FCA/
PRA]
- 18.4.3 G The *FSA* regulators will want to satisfy ~~itself~~ themselves 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 all applicable requirements.~~
[FCA/
PRA]
- 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 necessary margin of solvency. Where the conditions of 87(1) and 87(3) are met the *FSA* prudential regulator may require a report from the *appropriate actuary* of the transferee to confirm that it will have an excess of assets over liabilities.
[FCA/
PRA]
- 18.4.5 G For a transfer of *long-term insurance business*, the *FSA* prudential regulator 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.
[FCA/
PRA]

- 18.4.6 [FCA/PRA] G Under the Friendly Societies Act 1992 the ~~FSA~~ prudential regulator ~~may not~~ is required to confirm a proposed transfer of engagements, unless it is It will do so only where it is satisfied that the transfer is in the interests of the members of each *friendly society* participating in the transfer (see SUP 18.4.25G(2)(b)). ~~It~~ The prudential regulator will therefore ask that the participating societies' *actuaries* confirm that the transfer is in the interests of the members.
- 18.4.7 [FCA/PRA] 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~~ prudential regulator 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 [FCA/PRA] G Amendments to a *friendly society's* registered rules may be necessary to permit a transfer to it. The ~~FSA~~ FCA will need to be consulted in the usual way about registration of the appropriate rules. Similarly for an amalgamation, each of the amalgamating societies has to approve the memorandum and rules of the new society and the requirements of schedule 3 to the Friendly Societies Act 1992 have to be met. It will be necessary to allow adequate time for these processes.
- 18.4.9 [FCA/PRA] 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~~ 4A of the *Act*. The ~~FSA~~ regulators will need sufficient time before ~~confirming~~ a transfer is confirmed 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 [FCA/PRA] 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~~ either regulator's approval, the ~~FSA~~ regulator's views on the content of the statement will be a factor that the prudential regulator will take ~~the statement~~ into account ~~when~~ before considering whether to confirm the amalgamation or transfer. A *friendly society* will therefore find it helpful to consult the ~~FSA~~ regulators about the content of such a statement.

FSA Exercise of discretion by the prudential regulator

- 18.4.11 [FCA/PRA] G The ~~FSA~~ prudential regulator has discretion under section 86(3)(b) of the Friendly Societies Act 1992 to allow a transferee society to resolve to

PRA] 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 prudential regulator will wish to ~~satisfy itself be~~ satisfied before exercising this discretion, are that the transfer will be in the interests of the members of both societies and that the transfer will not mean a change of policy by the transferee society. The FSA prudential regulator is unlikely to exercise this discretion unless the transferee is significantly larger than the business to be transferred.

18.4.12 G The FSA prudential regulator 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 prudential regulator may direct that the summary is to be provided separately if inclusion appears impractical.

...

18.4.16 G The information should state whether any of the participants has any significant future capital commitments. The FSA prudential regulator 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 necessary~~ margin of solvency and free assets) for each participant.

18.4.18 G The FSA prudential regulator 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.

...

18.4.20 G Under schedule 15 to the Friendly Societies Act 1992, the FSA prudential regulator may require the statement to include any other matter. ~~The FSA would normally require~~ Under this provision, inclusion of the terms on which

the amalgamation or the transfer of engagements is to be made will usually be required.

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

...

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 prudential regulator 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 prudential regulator. If the FSA prudential regulator confirms a transfer, then ~~the FCA~~ will register the society's instrument of transfer after receiving an application on the appropriate form by the transferor society and the transferee. If the FSA prudential regulator confirms an amalgamation, ~~the FCA~~ will register the successor society. All the property, rights and liabilities pass on the transfer date specified by the FSA prudential regulator.

- 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 prudential regulator for confirmation of an amalgamation or transfer and the FSA prudential regulator 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 prudential regulator 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 prudential regulator

~~considers~~ consider that:

...

(2) the FSA prudential regulator must be satisfied that:

(a) the transferee or successor society will have any *permissions* necessary under Part ~~IV~~ 4A of the *Act*;

...

(3) for a transfer, the transferee possesses the ~~required minimum margin necessary margin of solvency~~ after taking the proposed transfer into account or, where it is not required to maintain a ~~required minimum margin necessary margin of solvency~~, 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 4A permission* is needed, the FSA prudential regulator 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.~~

[FCA/
PRA]

18.4.27 G The FSA prudential regulator 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 prudential regulator 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.

[FCA/
PRA]

Confirmation procedures: representations

18.4.28 G Any interested party has the right to make representations to the FSA prudential regulator 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.

[FCA/
PRA]

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 prudential regulator 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

[FCA/
PRA]

intention, in writing, to the FSA prudential regulator by the same date.

- 18.4.30 G The FSA prudential regulator 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 prudential regulator.
- 18.4.31 G The ~~FSA expects~~ regulators expect that any documents referred to in a society's comments will be made available by the society for inspection at its registered office and, if reasonably possible, at the venue of the hearing on the date of the hearing. However if a society applies to put documents which it considers to be sensitive ~~to the FSA~~ to the regulator(s) in confidence, the FSA regulators will balance any disadvantage this might cause interested parties in making representations against the commercial damage that publication of the documents might cause, and the prudential regulator 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 prudential regulator 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 the prudential regulator's representatives. The hearing may last longer than one day and may be adjourned. The FSA prudential regulator 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 prudential regulator 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 prudential regulator's representatives, the press and the general public will then be admitted, within the limits of the space available. However, the FSA prudential regulator's representatives may decide that parts of the hearing will be in private if that appears to them to be desirable.
- 18.4.35 G The procedure will be informal. All participants will be expected to speak concisely and avoid repetition. The FSA prudential regulator 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:

...

- (4) the other participants will be invited to speak to their representations. The ~~FSA~~ prudential regulator expects to call them in order of a list arranged, so far as possible, by subject matter;

...

18.4.36 G The above procedure may be varied according to the circumstances at the [FCA/ PRA] hearing, and is intended only as a guide. The hearing may be adjourned if the ~~FSA~~ prudential regulator's representatives consider that necessary to enable facts to be checked or additional information to be obtained.

18.4.37 G The ~~FSA~~ prudential regulator 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.

Appendix 18

Designation of changes to SUP 18

Appendix 18: Designation of changes to SUP 18

Handbook Provision	Designation
SUP 18.1	PRA and FCA
SUP 18.2	PRA and FCA
SUP 18.3	PRA and FCA
SUP 18.4	PRA and FCA

Appendix 19

Changes to the Glossary of definitions

GLOSSARY LEGAL CUTOVER INSTRUMENT 2012

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct 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 137A (The FCA’s general rules);
 - (2) section 137R (General supplementary powers); and
 - (4) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers referred to above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Powers exercised by the Prudential Regulation Authority

- C. The Prudential Regulation 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 137E (The PRA’s general rules); and
 - (2) section 137R (General supplementary powers).
- D. The rule-making powers referred to above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- E. This instrument comes into force on [*date*].

Amendments to the Handbook

- F. The Glossary of definitions is amended in accordance with the Annex to this instrument.

Citation

- G. This instrument may be cited as the Glossary Legal Cutover Instrument 2012.

By order of the Board of the Financial Conduct Authority
[*date*]

By order of the Board of the Prudential Regulation Authority
[*date*]

Annex

Amendments to the Glossary of definitions

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

<u>appropriate regulator</u>	(1) <u>in the FCA Handbook, the FCA; and in the PRA Handbook, the PRA;</u> (2) (a) <u>in SUP 11 “appropriate regulator” has the meaning given in section 178 of the Act, and</u> (b) <u>in SUP 18 “appropriate regulator” has the meaning given in section 103A of the Act.</u>
<u>FCA</u>	<u>Financial Conduct Authority.</u>
<u>FCA- authorised person</u>	<u>an authorised person who is not a PRA-authorised person.</u>
<u>FCA Handbook</u>	<u>the FCA’s Handbook of rules and guidance.</u>
<u>firm</u>	(1) <u>in the FCA Handbook, an authorised person, but not a professional firm unless it is an authorised professional firm (see also GEN 2.2.18R for the position of an authorised partnership or unincorporated association which is dissolved).</u> (1A) <u>in the PRA Handbook, a PRA-authorised person</u> ...
<u>guidance</u>	<u>guidance given by the FSA under the Act;</u> (1) <u>in the FCA Handbook, by the FCA under the Act; or</u> (2) <u>in the PRA Handbook, by the PRA.</u>
<u>Handbook</u>	<u>the FSA’s Handbook of rules and guidance (for a table of contents, see the Reader’s Guide) FCA Handbook or the PRA Handbook as appropriate.</u>
<u>PRA</u>	<u>Position Risk Adjustment; a percentage applied to a position as part of the process of calculating the PRR in relation to that position as set out in the tables in BIPRU 7.2.44R (Specific risk PRAs), BIPRU 7.2.57R (General market risk PRAs), BIPRU 7.3.30R (Simplified equity method PRAs), BIPRU 7.3.34R (PRAs for specific risk under the standard equity method) and BIPRU 7.6.8R (The appropriate PRA) and also as set out in BIPRU 7.2.48AR to BIPRU 7.2.48LR Prudential Regulation Authority.</u>
<u>PRA-</u>	<u>as defined in section 2B(5) of the Act, an authorised person who has</u>

authorised person

permission:

- (1) given under Part 4A of the Act, or
- (2) resulting from any other provision of the Act.

to carry on regulated activities that consist of or include one or more PRA-regulated activities.

PRA Handbook

the PRA's Handbook of rules and guidance.

PRA-regulated activity

a regulated activity specified in an order made under section 22A of the Act or specified pursuant to a power granted in such an order.

statutory objectives

(1) for the FCA (as described in sections 1B, 1C, 1D and 1E of the Act):

(a) its strategic objective of ensuring that the relevant markets function well; and

(b) its operational objectives:

(i) the consumer protection objective (as defined in section 1C of the Act);

(ii) the integrity objective (as defined in section 1D of the Act); and

(iii) the competition objective (as defined in section 1E of the Act);

(2) for the PRA (as described in sections 2B, 2C and 314A of the Act):

(a) its general objective of promoting the safety and soundness of PRA-authorised persons; and

(b) its insurance objective of contributing to the securing of an appropriate degree of protection for those who are or may become policyholders.

Appendix 20

Designation of changes to the Glossary of definitions

Appendix 20: Designation of changes to the Glossary of Definitions

Definition	Designation
<i>appropriate regulator</i>	PRA and FCA
<i>FCA</i>	PRA and FCA
<i>FCA-authorised person</i>	PRA and FCA
<i>FCA Handbook</i>	PRA and FCA
<i>firm</i>	PRA and FCA
<i>guidance</i>	PRA and FCA
<i>Handbook</i>	PRA and FCA
<i>PRA</i>	PRA and FCA
<i>PRA-authorised person</i>	PRA and FCA
<i>PRA Handbook</i>	PRA and FCA
<i>PRA-regulated activity</i>	PRA and FCA
<i>statutory objectives</i>	PRA and FCA

Appendix 21

Deletions to the Handbook

HANDBOOK DELETIONS LEGAL CUTOVER INSTRUMENT 2012**Powers exercised by the Financial Conduct Authority**

- A. The Financial Conduct 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 137A (The FCA’s general rules);
 - (2) section 137R (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above relevant to making rules are specified for the purposes of section 138G (Rule-making instruments) of the Act.

Powers exercised by the Prudential Regulation Authority

- C. The Prudential Regulation 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 137E (The PRA’s general rules); and
 - (2) section 137R (General supplementary powers).
- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- E. This instrument comes into force on [*date*].

Amendments to the Handbook

- F. The modules of the FCA and PRA Handbooks of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Senior Management Arrangements, Systems and Controls manual (SYSC)	Annex A
Financial Stability and Market Confidence sourcebook (FINMAR)	Annex B
Interim Prudential sourcebook for Investment business (IPRU-INV)	Annex C
Conduct of Business sourcebook (COBS)	Annex D
Supervision manual (SUP)	Annex E
Collective Investment Schemes sourcebook (COLL)	Annex F

- E. The provisions of the Complaints against the FSA sourcebook (COAF) are revoked in their entirety.

Citation

- E. This instrument may be cited as the Handbook Deletions Legal Cutover Instrument 2012.

By order of the Board of the Financial Conduct Authority
[*date*]

By order of the Board of the Prudential Regulation Authority
[*date*]

Annex A

**Amendments to the Senior Management Arrangements, Systems and Controls
sourcebook (SYSC)**

SYSC 3.2.5AR and SYSC 3.2.5BG are deleted in their entirety. The deleted text is not shown.

Annex B

Amendments to the Financial Stability and Market Confidence sourcebook (FINMAR)

FINMAR 3 is deleted in its entirety. The deleted text is not shown.

Annex C

**Amendments to the Interim Prudential sourcebook for Investment business
(IPRU(INV))**

IPRU(INV) TP1 is deleted in its entirety. The deleted text is not shown.

Annex D

Amendments to the Conduct of Business sourcebook (COBS)

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

COBS TP2	Other Transitional Provisions				(5)	(6)
(1)	(2)	(3)	(4)	(5)	(6)	
...	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force	
2.15	The changes to <i>COBS</i> set out in Annex H of the Electronic Money and Payment Services Instrument 2011	R	In relation to a person deemed to have been granted authorisation by virtue of regulation 74 of the <i>Electronic Money Regulations</i>, the changes effected by the Annex listed in column (2) do not apply and <i>COBS</i> 5 and <i>COBS</i> 15.3.1 R, <i>COBS</i> 15.3.4 R and <i>COBS</i> 15.4, as they were in force as at 29 April 2011, will apply from 30 April 2011 for as long as that person is deemed to be authorised by virtue of regulation 74 of the <i>Electronic Money Regulations</i>. [deleted]	30 April 2011	30 April 2011	
...						

Annex E

Amendments to the Supervision manual (SUP)

Each of the following provisions is deleted in its entirety. The deleted text is not shown.

SUP App 1

SUP TP 1.2, row 12A

SUP TP 1.3

SUP TP 1.4

SUP TP 1.6

Annex F

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

6 Operating duties and responsibilities

...

6.6 Powers and duties of the scheme, the authorised fund manager, and the depositary

...

Conflicts of interest: guidance

- 6.6.18 G (1) ~~The effect of COBS TP 2.12R is that COB 7.1 (Conflict of interest and material interest) (as it was in force on 31 October 2007) continues to apply for *scheme management activity* and contains rules on the fair treatment of *customers* where a *firm* has a conflict of interest in relation to a transaction. COLL 6.6.17 R (1) provides *rules* for specific circumstances where COB 7.1 would not be appropriate for an *authorised fund*. [deleted]~~

...

PUB REF: 002979

The Financial Services Authority
25 The North Colonnade Canary Wharf London E14 5HS
Telephone: +44 (0)20 7066 1000 Fax: +44 (0)20 7066 1099
Website: www.fsa.gov.uk

Registered as a Limited Company in England and Wales No. 1920623. Registered Office as above.