

Implementation of the Acquisitions Directive: a consultation document

September 2008



HM TREASURY





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If you require this information in another language, format or have general enquiries about HM Treasury and its work, contact:

Correspondence and Enquiry Unit
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 4558

Fax: 020 7270 4861

E-mail: public.enquiries@hm-treasury.gov.uk

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EXECUTIVE SUMMARY

In September 2007 the European Parliament and the European Council adopted the Acquisitions Directive, which concerns procedural rules and evaluation criteria for the prudential assessment of acquisitions and increases of holdings in the financial sector. The Acquisitions Directive must be implemented into national law by 21 March 2009. The main aim of the Directive is to improve considerably the process of supervisory approvals for acquisitions of financial services firms by increasing legal certainty, clarity and transparency. This should assist greater levels of cross-border acquisition activity.

This consultation document sets out how the Government and the Financial Services Authority (FSA) propose to implement the Directive using an effective, proportionate, and risk-based approach. It explains where the Government has flexibility in implementation and presents the options available. In particular, it includes a discussion of the following issues:

- The scope of the Directive and the level of harmonisation that applies;
- The notification and decision-making process for supervisory authorities and firms;
- Deadlines within which supervisory authorities must make assessments; and
- Prudential criteria for the assessment.

It also sets out how the Government plans to take forward proposals relating to business not covered by EC directives, which were first raised in the March 2006 consultation “Reducing reporting requirements: A consultation on reform of the ‘controllers regime’ in Part XII of the Financial Services and Markets Act 2000”. In addition, it sets out proposals to improve the usability of the enforcement powers available to the FSA.

This consultation also describes the amendments the FSA proposes to make to its Handbook to implement these changes. This joint approach will give respondents a full picture of the proposed new regime.

INTRODUCTION

ACQUISITIONS

1.1 In a truly integrated European Union capital market, cross border acquisitions should be an option available to all financial institutions. These acquisitions can bring benefits such as: providing more efficient allocation of capital within the EU; generating economies of scale; enabling institutions to take greater advantage of technological progress; enhancing competition and competitive pressures; and allowing consumers to benefit from a deeper and more integrated European financial services market with an increased choice of products and higher returns on investments.

1.2 The evidence, however, suggests that the extent of cross-border acquisitions in financial services in the EU is relatively low, compared to those purely within national boundaries. There are sometimes business reasons for this. However, in addition to business considerations, the European Commission considers that one factor explaining the low level of consolidation across borders within the EU could be the regulatory framework for supervisory approvals of acquisitions. The current legal framework does not provide specific criteria for assessing the suitability of the acquirer, nor does it set out in detail the procedure by which acquisitions are assessed. The Commission is concerned that this could result in perceived or actual uncertainty of outcome and may act to reduce cross-border acquisitions.

Means of market entry

1.3 Credit institutions, insurance companies and securities firms in one EU Member State wishing to operate in another have a number of routes open to them, in terms of mode of supply and means of market entry:

- Branch operations allow such institutions to establish themselves in another 'host' EU Member State, on the basis of the 'single passport'. The new operation remains part of the institution's existing corporate structure and is primarily subject to supervision by the home authority;
- Subsidiary operations allow institutions to establish a new and separate corporate entity which is subject to the legal, tax and supervisory rules of the new Member State; and
- Cross-border selling allows a firm in Member State A to sell its products or services directly to consumers in Member State B without requiring a presence in the host Member State, whether remotely or via the internet, or through sales networks of another institution, using joint ventures or strategic alliances.

1.4 Consolidation occurs through acquisitions of legal entities when firms integrate to achieve economies of scale or scope. Takeovers allow the entrant to capitalise on the incumbent's operations and distribute its products or services using the latter's existing networks.

RATIONALE FOR INTERVENTION

1.5 Despite the potential benefits, the Commission found that there had been a relatively low level of cross-border consolidation in some financial services sectors in recent years. The Commission's study into EU consolidation published in April 2005 highlighted that the proportion of cross-border mergers and acquisitions (M&A) was around 20 per cent for banking (credit institutions) and 15 per cent for insurance – against 20 per cent in the financial sector as a whole. In contrast, the proportion of cross-border M&A for securities and post-trade activities was almost 60 per cent and for asset management the proportion was 20 per cent as acquirers and 30 per cent as targets – against 45 per cent in non-financial sectors.

1.6 In the light of this, the Commission asked whether the regulatory environment acted as a barrier to cross-border M&A – in particular Article 16 of the Banking Consolidation Directive (BCD), which regulates the supervisory approvals process for M&A in Europe. The study concluded that it was perceived to be a barrier, especially for large and very large institutions. Therefore, the Commission announced on 11 September 2004 that it would review the existing supervisory rules for approvals of M&A in the banking sector, provided for in Article 16 of the BCD, to establish whether they were sufficiently clear and transparent to provide the optimal regulatory framework for M&A to take place.

1.7 As drafted, the supervisory rules in Article 16 effectively permitted banking supervisors to block the acquisition of certain shareholdings in a credit institution. These blocking powers could be exercised where acquisitions exceeded certain thresholds, called 'qualifying shareholdings', and where, in view of the need to ensure sound and prudent management, the prudential supervisor was not satisfied with the suitability of the proposed acquirer.

1.8 The European Commission and Member States noted that, as then drafted, Article 16 did not define how the suitability of the proposed acquirer should be assessed. This allowed a broad range of different interpretations by supervisors. The absence of a detailed procedure in the legislation setting out how assessments should be made created further uncertainty. The Commission felt this allowed regulators, national or supranational authorities to oppose a business decision that could result in consolidation. In extreme cases, an abuse of power could frustrate and render impractical an otherwise economically justifiable initiative.

1.9 While the Commission's original work only referred to the banking sector, the review was part of an overall strategy towards a more consistent approach to decision-making and enforcement by national supervisors, and a more consistent application of the rules. The increasing links between the financial services sectors and the need to maintain competitiveness between sectors led the Commission to expand the review to cover insurance and securities. This approach received almost unanimous support from Member States and was agreed under the UK Presidency of the EU in November 2005.

European legislation

1.10 In September 2007 the European Parliament and the European Council adopted the Acquisitions Directive, which concerns procedural rules and evaluation criteria for the prudential assessment of acquisitions and increases of holdings in the financial

sector.¹ The Acquisitions Directive must be implemented into national law by 21 March 2009. The main aim of the Directive is to improve considerably the process of supervisory approvals for acquisitions of financial services firms by increasing legal certainty, clarity and transparency. This should assist greater levels of cross-border acquisitions.

1.11 This consultation document sets out how the Government and the Financial Services Authority (FSA) propose to implement the Directive using an effective, proportionate, and risk-based approach. It explains where the Government has flexibility in implementation and presents the options available. In particular, it includes a discussion of the following issues:

- The scope of the directive and the level of harmonisation that applies;
- The notification and decision-making process for supervisory authorities and firms;
- Deadlines within which the supervisory authority must make the assessment; and
- Prudential criteria for the assessment.

Related domestic proposals

1.12 This consultation will also set out how the Government and the FSA plan to take forward proposals discussed in the March 2006 consultation *Reducing reporting requirements: A consultation on reform of the 'controllers regime' in Part XII of the Financial Services and Markets Act 2000*. This work was put on hold in light of the decision taken at European level to revise the relevant aspects of certain directives quickly; it can now be taken forward as part of the implementation of the resulting Acquisitions Directive.

1.13 In addition, this consultation sets out proposals to improve the usability of the FSA's enforcement powers, and describes the amendments the FSA proposes to make to its Handbook to implement these changes. The intention of the Government and the FSA is that this joint approach will give respondents a full picture of the proposed new regime.

CURRENT SCOPE OF THE REGIME

1.14 Section 178 of the Financial Services and Markets Act 2000 (FSMA) requires all persons to notify the FSA if a step they are proposing to take would result in them acquiring control, or an additional measure of control, or increasing a relevant kind of control over a UK authorised person. (The concept of 'control' is in effect the same as having a 'qualifying holding'.) Section 190 of FSMA requires persons to notify the FSA if a step they are proposing to take would result in them ceasing to have control of a relevant kind, or reducing a relevant kind of control over a UK authorised person. A person must also notify the FSA within 14 days of becoming aware that they have acquired control or an additional kind of control, or have increased or reduced or ceased to have control without having taken any such step.

¹ The Directive was adopted on 5 September 2007 and published in the Official Journal of the EU on 21 September 2007.

1.15 Notifications of an acquisition or increase in control must be submitted to the FSA in writing and must include such information and documentation as reasonably required by the FSA. Within three months of receiving such notifications the FSA must decide whether to approve, attach conditions to, or object to the change of control. The approval requirements are that the person who acquires control is fit and proper to do so and that the interests of consumers would not be threatened by their acquisition of or increase in control. When deciding whether these requirements are met the FSA must have regard to its duty to ensure that the regulatory threshold conditions will continue to be met.

1.16 If shares are acquired or continue to be held by a person in contravention of any conditions applied by the FSA or in contravention of an FSA notice of objection then, under Section 189(2) of FSMA, the FSA may place four different types of restriction on those shares. Under Section 189(3) of FSMA, the FSA may also apply to the court for those shares to be sold.

1.17 The use of these powers by the FSA is subject to a number of safeguards similar to those which exist in other parts of FSMA. In particular, the FSA is required to issue warning notices and decision notices, and a person receiving a decision notice may refer the decision to the Financial Services and Markets Tribunal. The FSA is also required to consult with supervisory authorities outside the UK in accordance with regulations made under FSMA², and to identify what steps a person must take or refrain from taking in order to satisfy the FSA's approval requirements. Persons subject to conditions applied by the FSA may apply for those conditions to be varied or cancelled.

Details of current regime

1.18 Section 179 of FSMA specifies when a person is considered to have acquired control over a UK authorised person:

- Section 179 (2) sets out eight cases in which control is considered to have been acquired (for the purpose of Part XII of FSMA) – for example when 10 per cent or more of the shares in a UK authorised person or in their parent are held, or when 10 per cent of the voting power may be exercised in a UK authorised person or in their parent. Sections 422 (1) and (2) of FSMA define a 'controller' in the same way;
- Section 179 (3) sets out which types of person are considered to be controllers. This includes the acquirer, any of the acquirer's associates, or the acquirer plus any of their associates. Section 422 (4) sets out which types of person are considered to be associates. This includes spouses, children, stepchildren, trustees, employees and partners; and
- Section 179 (4) sets out what is regarded to be a kind of control. Four kinds of control are listed, relating to the holding of shares and the exercise of voting power. Section 422(6) and (7) respectively set out the meaning of shares and voting power.

² FSMA 2000 (Consultation with Competent Authorities) Regulations 2001 (SI 2001/2509), and Financial Conglomerates and Other Financial Groups Regulations 2004 (SI 2004/1862).

1.19 Section 180 of FSMA specifies when a person is considered to have increased his control over a UK authorised person. Control is increased when the percentage of shares held in or voting powers which may be exercised in relation to a UK authorised person or in their parent increases beyond the thresholds of 20 per cent, 33 per cent and 50 per cent or when a person becomes the parent undertaking of a UK authorised person.

1.20 Section 181 of FSMA specifies when a person is considered to have reduced their control over a UK authorised person. This occurs when these thresholds of 10 per cent, 20 per cent, 33 per cent, and 50 per cent are crossed downwards, or when a person ceases to be a parent undertaking of a UK authorised person.

1.21 Under Section 192 of FSMA, HM Treasury may by order provide for exemptions from the obligations to report or may vary, remove, or add cases in which a person is treated as being a controller or as acquiring, increasing, or reducing his control.

1.22 This power has been used to create a simplified regime for general insurance intermediaries: the 10 per cent, 20 per cent, 33 per cent and 50 per cent thresholds were replaced by a single 20 per cent threshold. SI 2003/1476 was introduced as part of the UK's implementation of the EC Insurance Mediation Directive (2002/92/EC), and was subject to full public consultation and accompanying impact assessment, which can be found on HM Treasury's website.

1.23 The power has also been used to exempt acquirers and controllers of friendly societies (SI 2001/2638) completely from the requirements in Part XII of FSMA, and to exempt the acquirers and controllers of authorised building societies (SI 2001/3338) from certain requirements in Part XII of FSMA.

Related FSA Handbook material

1.24 In addition to the proposed FSMA changes, this consultation sets out in Annex D the related changes the FSA proposes to make to its Handbook. The current FSA Handbook material in relation to the acquisition of a qualifying holding and subsequent changes in control is contained in Chapters 11 and 16 of the Supervision Manual (SUP). SUP 11.3 is intended to assist potential acquirers in complying with their notification obligations under FSMA. SUP 11.4 to SUP 11.6 are aimed at ensuring that the FSA receives the information it needs from firms to assist with its responsibility to identify and monitor firms' controllers. SUP 11.7 contains information regarding the application of the FSMA approval criteria and the FSA's right to object to existing controllers. SUP 16.4 requires certain firms to submit an annual report on their controllers.

HOW TO RESPOND

1.25 HM Treasury and the FSA invite comments on the policy proposals for implementing the Acquisitions Directive, including the draft legislation and FSA Handbook changes set out in Annexes C and D. Specific questions are included in subsequent chapters of this document, and a full set of questions is listed in Annex A.

1.26 The consultation period begins with the publication of this document. Please ensure that your response reaches the Treasury by Friday 12 December 2008.

1.27 Comments should be sent to:

Aviva Rosen/Karen Ainsworth
HM Treasury, 3/W2
1 Horse Guards Road
London SW1A 2HQ
E-mail: aviva.rosen@hm-treasury.x.gsi.gov.uk

1.28 If you have a specific query about this consultation document, please contact: michael.jampel@hm-treasury.gsi.gov.uk or john.sparrow@hm-treasury.gsi.gov.uk. Questions about the proposed FSA Handbook amendments can be addressed to gladys.asogbon@fsa.gov.uk.

1.29 This document can also be found on HM Treasury's website: <http://www.hm-treasury.gov.uk> and the FSA's website: <http://www.fsa.gov.uk>. The final text of the Acquisitions Directive can be found at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_247/l_24720070921en00010016.pdf

1.30 Hard copies are available on request from Aviva Rosen/Karen Ainsworth at the address in paragraph 1.27.

1.31 When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Confidentiality of responses to this consultation

1.32 Written responses may be made public on HM Treasury's website, unless the author specifically requests otherwise. In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of emails will be disregarded for the purpose of publishing responses unless an explicit request for confidentiality is made in the body of the response. If you wish part, but not all, of your response to remain confidential, please supply two versions; one for publication on the website with the confidential information deleted, and a second confidential version for use by Treasury officials only. Unless the author specifically requests otherwise, consultation responses, including those marked confidential, will be shared with the FSA.

1.33 Even where confidentiality is requested, if a request for disclosure of the consultation response is made in accordance with freedom of information legislation, and the response is not covered by one of the exemptions in the legislation, the Government may have to disclose the response in whole or part.

1.34 Any Freedom of Information Act queries should be directed to:

Correspondence and Enquiry Unit
Freedom of Information Section
HM Treasury,
1 Horse Guards Road
London SW1A 2HQ
Telephone: +44 (0) 20 7270 4558 Fax: +44 (0) 20 7270 4681
Email: public.enquiries@hm-treasury.x.gsi.gov.uk

2

THE ACQUISITIONS DIRECTIVE – CHANGES INTRODUCED AND PROPOSED IMPLEMENTATION

AIMS AND OBJECTIVES

2.1 The Acquisitions Directive aims to improve considerably the process of supervisory approvals for the acquisition of financial services firms by increasing legal certainty, clarity, transparency, and consistency of treatment between different financial sectors.

2.2 More specifically, the Directive intends to do the following:

- Set out the entire procedure to be applied by supervisory authorities when assessing acquisitions on prudential grounds;
- Introduce a clear and transparent notification and decision-making process for supervisory authorities and firms;
- Set deadlines within which the supervisory authority must make the assessment. Any ‘stopping of the clock’ for supervisory authorities to ask for further information from the proposed acquirer is limited to one occasion and subject to clear conditions;
- Clearly lay out the prudential criteria for the assessment; and
- Achieve maximum harmonisation of the provisions relating to the supervisory approvals process.

2.3 The intention behind the Directive is to align the process for supervisory approvals of acquisitions to ensure absolute consistency between all three financial sectors (i.e. credit institutions, insurance and securities). The Government and the Financial Services Authority (FSA) support this approach in view of the increasingly integrated nature of these sectors’ functions. Respondents to the September 2006 discussion paper¹ strongly supported this consistent approach.

GENERAL APPROACH TO IMPLEMENTATION

2.4 Implementing the Directive in UK law will be done through changes to the Financial Services and Markets Act 2000 (FSMA). The requirements must apply to all potential acquirers, whether or not they are FSA-authorized firms. The FSA will update its Handbook as set out in Annex D.

2.5 While it is necessary to ensure that the new provisions mesh with existing FSMA provisions, in general the Government plans to take a ‘copy out’ approach to the implementation of the Directive; this means using the terms in the Directive wherever appropriate, without significant elaboration.

Question 1: Do you have any comments with regard to the draft Statutory Instrument set out at Annex C?

¹ “EU proposal to amend the supervisory review process for cross-border mergers and acquisitions in the relevant banking, insurance and securities directives: a discussion paper”, September 2006.

Question 2: Do you have any comments with regard to the changes the FSA propose to make to its Handbook as set out at Annex D?

SCOPE

Level of harmonisation

2.6 The EU review of the supervisory approvals processes in all the relevant directives proposed that they should be fully harmonised. This proposal has been carried out in the Acquisitions Directive, which is therefore ‘maximum harmonisation’. This means that Member States are not able to impose rules over and above what is laid out in the text of the Directive itself.

2.7 This is in contrast to the articles in the relevant credit institutions, securities and insurance directives that the Acquisitions Directive amends, which imposed minimum standards. This enabled Member States to impose additional requirements on firms seeking to acquire another firm which went beyond the scope of the Directive. The Commission considered that minimum harmonisation allowed scope for potential misuse of the system by, for example, making it possible for supervisory authorities to add unreasonable requests for information during the approvals process, or refuse applications, or impose conditions on grounds unrelated to the purpose of the relevant directives.

2.8 The two-year review of FSMA considered the controllers regime and asked consultees whether the regime merited further attention. A number of general concerns were raised by respondents who felt that the current FSMA controllers regime was super-equivalent to EC requirements, overly burdensome and placed significant compliance costs on both the regulated and unregulated communities.

2.9 In line with better regulation principles, the Government considers that where harmonisation is shown to be necessary, the level of harmonisation should reflect the objectives of the regulation. In many cases, the most appropriate and proportionate level will be minimum harmonisation with mutual recognition of domestic rules, i.e. leaving Member States free to determine how to implement nationally the rules set at a European level, but also ensuring that Member States do not restrict the free movement of goods or services.

2.10 However, in this case, the regulatory failure that the EU review sought to address was that minimum harmonisation of the process of supervisory approvals had allowed Member States to interpret European rules very differently, leading to uncertainty of outcome and creating a barrier to consolidation.

2.11 Respondents to HM Treasury’s September 2006 discussion paper strongly supported the intention that the supervisory approvals process be fully harmonised across Europe.

Definition

2.12 The Directive text revises the definition of who is a proposed acquirer for the purposes of requiring approval before undertaking an acquisition. A proposed acquirer is now any natural or legal person or such persons acting in concert who has/have taken a decision either to acquire or increase, directly or indirectly, a qualifying holding

in a certain type of financial services firm². Increases in a holding are relevant if, as a result, the proportion of the voting rights or the capital held would reach or exceed 20 per cent, 30 per cent or 50 per cent or so that the acquired firm would become its subsidiary.

2.13 The main differences from the UK regime are: the use of the term ‘acting in concert’ (replacing the similar concept of an ‘associate’ in Section 422(4) of FSMA); and the reduction from 33 per cent to 30 per cent of one of the boundaries for approvals. (In fact, the Directive allows existing national thresholds of 33 per cent to remain, but we propose to move to 30 per cent; see Thresholds section, below.)

2.14 This single definition simplifies the approach currently taken in the FSMA controllers regime, which sets out eight cases in which control is considered to have been acquired.

Acting in concert

2.15 As the concept of ‘acting in concert’ appears in the Directive, its meaning is governed by EC law and may develop by way of the case law of the European Court of Justice. While including a definition in FSMA would aid clarity, departing from a copy-out approach risks incorrect implementation. Therefore, the Government does not consider that it is appropriate to include such a definition, or to retain provisions which might overlap with this concept (such as ‘associate’, as defined in Section 422).

2.16 Guidance on the meaning of ‘acting in concert’ has been proposed in the draft guidelines³ on the Directive produced by the three Lamfalussy Level 3 committees⁴, as follows:

Persons are ‘acting in concert’ when each of them decides to exercise his rights linked to the shares he intends to acquire in accordance with an explicit or implicit agreement made among them. It makes no difference whether this agreement is made in writing or verbally, or whether it becomes apparent only ‘de facto’, or whether the persons acting in concert are otherwise linked with each other. Notification of the voting rights held collectively by these persons will have to be made to the competent authorities by each of the parties concerned or by one of these parties on behalf of the group of persons acting in concert.

Thresholds

2.17 The process introduced by the Directive is an explicit approvals process for all four thresholds of 10 per cent, 20 per cent, 30 per cent, and 50 per cent and is consistent with the EC Transparency Directive (2004/109/EC). The aim is to allow supervisory authorities to examine proposals at significant stages while trying to avoid placing unnecessary burdens on firms.

² Credit institutions, insurance, assurance and reinsurance undertakings, investment firms, and UCITS management companies.

³ “Consultation paper - Guidelines for the prudential assessment of acquisitions and increase of holdings in the financial sector required by Directive 2007/44/EC”, 11 July 2008, CEBS/2008/40, CEIOPS-3L3-10-08, CESR/08-543. Consultation open until 3 October 2008. See http://www.ceiops.eu/media/docman/public_files/consultations/consultationpapers/3L3-MA-Guidelines.pdf.

⁴ The Committee of European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), and the Committee of European Securities Regulators (CESR).

2.18 The Directive also allows Member States to require notification by a proposed acquirer at a level that is below the 10 per cent threshold. The UK does not currently have a threshold below 10 per cent and does not propose to create one; both the Government and the FSA consider that a 10 per cent interest is the lowest level at which significant influence can generally be exerted over a firm.

2.19 As mentioned earlier, the Directive allows Member States to keep a threshold at 33 per cent rather than 30 per cent. However, the Government proposes not to take up this option. This is in the interests of simplicity: international firms should ideally be faced with the same regime in each Member State. (There may therefore need to be transitional provisions covering acquisitions proposed during the period around entry into force.)

Question 3: Do you agree that the UK should have a threshold at 30 per cent (rather than 33 per cent)?

Pre-approval

2.20 The process set out in the Directive requires approval to be sought and granted before an acquisition can proceed. The Directive applies to proposed acquisitions of credit institutions, insurance, assurance and reinsurance undertakings, investment firms, and UCITS management companies. (The existing FSMA controllers regime provides for pre-notification and pre-approvals processes.) The new assessment criteria require the FSA to appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition, while having regard to the likely influence of the proposed acquirer on the financial undertaking concerned.

Exemptions

2.21 The Directive also introduces a number of new exemptions from the pre-approval requirements, which should help reduce the notification burden placed on the industry. These exemptions derive from a cross reference to the Transparency Directive, and are discussed in the following paragraphs.

2.22 Voting rights held by a firm acting in a custodial capacity, or acquired for the sole purpose of clearing and settling, are exempt, provided custodians can only exercise voting rights under instructions given in writing or by electronic means. This reflects concerns expressed by industry in the Two-Year Review of FSMA and the position taken by the Government in the March 2006 consultation on the controllers regime. In addition, voting rights or shares held by an investment firm or credit institution as a result of the provision of underwriting services or the placing of securities on a firm commitment basis are exempt provided the holding is for no longer than a year and the rights not exercised.

2.23 The Government intends to take advantages of these exemptions, as they offer a more proportionate and less burdensome regime for these types of firms. (The Transparency Directive exemptions for market-making and for trading books only apply to a 5 per cent holding. As discussed under the Thresholds section earlier in this chapter, the UK does not propose to create a threshold below 10 per cent; therefore these exemptions are not relevant for our implementation of the Directive.)

2.24 However, in many cases the exemptions do not address the activities of fund managers. The activities of fund managers rely on their ability to react quickly to market movements and take advantage of buying opportunities on behalf of their clients. It is likely that fund managers will regularly cross the 10 per cent trigger for approval, which will ultimately slow down their ability to respond to the market and may jeopardise their positions and the balance between funds.

2.25 The Government intends to maintain a proportionate regime for fund managers by taking account of the text in Recital 5 which explains that “The directive should not prevent market participants from operating effectively in the securities market...”. We propose that continuing to allow fund managers to pre-notify proposed acquisitions, by providing the FSA with a statement of what they plan to acquire in the course of their investment activities, will meet the requirements of the Directive.

Process

2.26 There are a number of notable changes that the Acquisition Directive makes to the existing Directives. They are:

- Setting out the prudential criteria for the assessment;
- Shortening the period of time the supervisory authority can take to make the assessment, from 90 calendar days (equivalent to 65 working days) to 60 working days;
- The ability to interrupt the assessment period (‘stop the clock’) once, for no more than 20 days, to seek further information. Further requests for information can be made, but without stopping the clock; and
- The option to extend the maximum interruption period to 30 working days if the proposed acquirer is regulated outside the European Community or is a person not authorised under the single market directives.

2.27 From a UK perspective, neither the Government nor the FSA expect that the impact of the process changes on FSMA will be significant.

Time period for assessment

2.28 Supervisory authorities will have up to two working days following receipt of a notification to acknowledge receipt to the proposed acquirer. They will have 60 working days to make a decision following acknowledgement (a reduction of five days) and may only stop the clock once, for a maximum of 20 days, to request further information. The clock may be stopped no later than the 50th working day of the assessment period. Any further requests for information by supervisory authorities for completion or clarification shall be at their discretion but does not result in another interruption period. This requirement removes the opportunity for the supervisory authorities to delay the process by submitting continual requests for information, which could act as a barrier to proposed acquisitions.

2.29 There is a strong case, and the Directive allows, for extending the time periods for third country acquirers or persons not authorised under the EU single market directives. This is because dealing with a proposed acquirer from outside the EU is likely in many circumstances to be less straightforward than dealing with European potential acquirers. Existing channels of communication set up through legislation and the Level 3 Lamfalussy Committees mean there are routes for supervisors to share

information, which may not exist to the same degree outside of the EU. Therefore the Government is proposing that the maximum interruption period for these acquirers should be extended to 30 working days.

Question 4: Do you agree that it should be possible to stop the clock for 30 days in the case of non-authorised and non-EC acquirers?

THE ASSESSMENT

Criteria

2.30 The current assessment criteria, as set out in the FSMA controllers regime, is that the person who acquires control must be fit and proper to do so and that the interests of consumer will not be threatened by their acquisition or increase in control. The FSA must have regard to its duty to ensure that the regulatory threshold conditions continue to be met when deciding whether the controllers regime requirements are met. The current directives do not require the supervisory authority to inform firms in advance about the information they will have to provide, nor does the authority need to inform them of the exact criteria against which they will be judged. The supervisory authority may adapt its assessment on a case-by-case basis. Despite this, the FSA has developed a suite of forms setting out the information that is generally required. As a result, the FSA does not require further information in most cases.

2.31 One of the Commission's stated reasons for introducing the Acquisitions Directive was to improve transparency in the supervisory approvals process for acquisition activity. The Directive requires supervisory authorities across Europe to assess the suitability of a proposed acquirer and the financial soundness of a proposed acquisition against the following publicly available criteria:

- The reputation of the proposed acquirer;
- The reputation and experience of any person who will direct the business of the financial institution as a result of the proposed acquisition;
- The financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the financial institution in which the acquisition is proposed;
- The ability of the financial institution to comply on an ongoing basis with the applicable prudential requirements. In particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among supervisory authorities and determine the allocation of responsibilities among them; and
- Whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk of this occurring.

2.32 A "Cross Border Mergers and Acquisitions Task Force" of the three Level 3 Lamfalussy committees was set up to aid common understanding and consistency of application of the list among Member States. The Task Force was specifically asked to:

reach a common understanding of the five assessment criteria in the Directive; establish an exhaustive and uniform list specifying the information required for notifications; define appropriate cooperation arrangements; and develop common guidelines for assessing ‘fitness and propriety’.

2.33 The Task Force was also requested to develop common principles on information gathering, having regard to the principle of proportionality. The principle requires information to be proportionate and adaptable to the nature of the proposed acquirer and acquisition. The Directive also requires that the likely influence of the proposed acquirer should be taken into account when assessing the notification and information requirements. Therefore, the guidelines⁵ contain a certain amount of flexibility on the amount of information required depending on the nature and purpose of the proposed acquisition.

2.34 The FSA intends to place the guidance material on its website.

2.35 The purpose of the Directive is to ensure the assessment is made on prudential grounds. The rationale for this is that prudential risk is regulated in all three sectors at a European level. Confining the assessment to this basis removes the scope for supervisory authorities to include national consumer protection or conduct of business rules in the assessment, which may vary substantially between Member States and therefore act as a higher barrier to acquisition in certain countries.

2.36 The Directive specifically prohibits Member States from judging the suitability of the proposed acquirer based on the economic needs of their domestic market. Member States are also prohibited from imposing any prior conditions on the level of shareholding that must be attained. However, supervisory authorities may fix a maximum time period for the completion of the proposed acquisition or increase in holding.

2.37 The list of criteria against which the suitability and financial soundness of the proposed acquirer will be judged is exhaustive and cannot be added to by supervisory authorities. This is to improve the consistency and transparency of the process, and guard against potential abuse by Member States.

2.38 At present, permission to acquire can be refused on both prudential and consumer-interest grounds. In future, only prudential criteria can be considered, but these include the reputation of the proposed acquirer. The FSA does not consider that this change will have a detrimental impact on its ability to prevent unsuitable acquisitions.

2.39 There is a procedure which will allow the criteria to be amended in the future by the Commission, Council and European Parliament, if necessary in order to keep track of market developments.

2.40 The Government and the FSA believe that the clear assessment criteria will be to the benefit of both the FSA and UK firms.

⁵ “Consultation paper - Guidelines for the prudential assessment of acquisitions and increase of holdings in the financial sector required by Directive 2007/44/EC”, 11 July 2008, CEBS/2008/40, CEIOPS-3L3-10-08, CESR/08-543., available at http://www.ceiops.eu/media/docman/public_files/consultations/consultationpapers/3L3-MA-Guidelines.pdf.

Opposing an acquisition

2.41 Supervisory authorities may, on completion of the assessment, decide to oppose the proposed acquisition. This can only be done if there are reasonable grounds for doing so on the basis of the criteria set out in the Directive or if the information provided by the proposed acquirer is incomplete. This is similar to the FSA's current approach.

2.42 If a supervisory authority does decide to oppose an acquisition, it must inform the acquirer in writing and provide its reasons, within two days of taking the decision, and not exceeding the assessment period. It has been left to individual Member States to decide whether this decision should be made public or not. The FSA currently publishes these decisions when it considers appropriate, and will continue to follow its existing practice as set out in Section 391 of FSMA.

2.43 The Directive also states that should a supervisory authority not oppose the proposed acquisition in writing within the assessment period, it shall be considered to be approved. Supervisory authorities are also given scope to fix a maximum period for the acquirer to conclude the proposed acquisition and extend it where appropriate. The FSA currently requests this where appropriate.

Collaboration with supervisory authorities in other Member States

2.44 The Directive requires supervisory authorities in Member States to work in consultation with each other when carrying out the assessment if the proposed acquirer is:

- A credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment management firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;
- The parent undertaking of one of the above types of business; or
- A natural or legal person controlling one of the above types of business.

2.45 The supervisory authority for the target firm will ultimately decide on the success of the application if it cannot reach an agreement jointly and within the time period with the supervisory authority for the proposed acquirer. However, a decision by the supervisory authority for the target firm shall indicate any views or reservations expressed by the supervisory authority for the proposed acquirer.

3

ASPECTS NOT COVERED BY THE DIRECTIVE

SIMPLIFICATIONS FOR BUSINESS NOT COVERED BY THE DIRECTIVE (RAISED IN A PREVIOUS CONSULTATION)

3.1 Most of the issues raised in the March 2006 consultation document on proposed changes to the controllers regime regarding business covered by European Directives have been superseded by the Acquisitions Directive. However, the consultation document also made proposals concerning non-directive business. It noted that a single 20 per cent notification threshold applied to general insurance intermediaries, which was consistent with the Insurance Mediation Directive, as well as friendly and building societies under certain circumstances. It observed that there were other business sectors that are currently subject to the full FSMA controllers regime, but not by virtue of any European directives. These included mortgage intermediaries, pre-paid funeral providers, occupational pension scheme firms, home reversion and home purchase plan providers and intermediaries, credit unions, some authorised professional firms, some commodity brokers and dealers, non-UCITS scheme operators, and some investment advisers, receivers and transmitters who do not hold client assets.

3.2 This was considered to be disproportionate, especially when viewed alongside the simplified regime which applies to general insurance intermediaries. However, the consultation document noted that removing all disclosure requirements in these sectors might expose investors, consumers and other third parties to risks of potential damage stemming from an objectionable change or increase in control. Industry had suggested that it might be preferable to apply a simplified regime with a single 20 per cent threshold to all business not covered by the underlying European directives. The Government agreed that this would appear to be a more proportionate way forward.

3.3 There was general agreement on these points among those responding to the consultation. Those who commented felt that a simplified regime should apply to all businesses not covered by the underlying directives. There was little support for the more radical option of not applying any regime to such businesses. On the whole, respondents agreed to a single 20 per cent threshold.

3.4 It is important to note that a single 20 per cent threshold will mean that the Financial Services Authority will need to assess against the likelihood of the proposed acquirer controlling 100 per cent of the target firm, as there will be no further thresholds.

Question 5: Do you agree with the respondents to the previous consultation and therefore with the Government's proposal to simplify the regime for non-directive firms by having a single threshold of 20 per cent?

3.5 Given that there is a unified regime under FSMA, and the close links to the subject matter of the Acquisitions Directive, the Government proposes to use its secondary legislation powers to make the above changes to the controllers regime for non-directive firms.

3.6 The Government also proposes to use these powers to apply the revised assessment deadlines, criteria and other provisions set out in the Acquisitions Directive to non-directive and Insurance Mediation Directive firms. This will ensure that a consistent approach is taken across sectors and that firms engaged in both directive and non-directive business will not have to follow two separate processes. Given the benefits for firms set out in the Acquisitions Directive procedures, the Government believes that this will be advantageous to business.

INVESTMENT EXCHANGES

3.7 Investment exchanges are covered by a controllers regime specified in chapter 1A of part XVIII of FSMA (section 301A onwards), which was inserted in 2007 to implement the Markets in Financial Instruments Directive (MiFID). It was drafted consistently with the existing controllers regime. This part of MiFID is not amended by the Acquisitions Directive, so there is no requirement to change this chapter of FSMA.

3.8 Nevertheless, to maintain consistency of treatment of similar matters, it may be helpful to amend these provisions in line with the changes required elsewhere in FSMA. The proposed Statutory Instrument in Annex C contains draft clauses to this end; the relevant FSA Handbook rules have also been amended – see Annex D. (Acquiring a holding in an investment exchange is subject to two thresholds, at 20 per cent and 50 per cent, which we are not proposing to change.)

Question 6: Would you find it helpful if the provisions concerning acquisitions of holdings in investment exchanges were amended to improve consistency with the regime for other financial institutions?

PENALTIES, RESTRICTIONS, AND ORDERS FOR SALE

Penalties for non-compliance

3.9 The penalty for most of the offences under the current regime is, on summary conviction, “a fine not exceeding level 5 on the standard scale”. Summary conviction means that the offence is dealt with in a Magistrates Court; Level 5 is currently £5000. (The only offence which is subject to a greater penalty is that of acquiring control despite receiving an objection from the FSA. This can lead to an unlimited fine or two years imprisonment, on conviction on indictment – i.e. in the Crown Court, after jury trial.)

3.10 £5000 may not be a sufficient deterrent. One possibility is to increase the fines to an unlimited amount, after trial in the Crown Court (but without the possibility of imprisonment except for the offence of continuing with an acquisition after the FSA has objected, as at present). The possibility of prosecuting these offences in the Magistrates Court would remain open, leading to a maximum fine of level 5 of the standard scale.

Question 7: Do you agree that £5000 is not a sufficient deterrent and therefore there should be the possibility of an unlimited fine after a trial by jury?

Restriction notices and orders for sale

3.11 As mentioned in Chapter 1, under the current regime if a person acquires shares improperly, i.e. in contravention of an objection from the FSA or in breach of a condition which the FSA has imposed, restrictions can be placed on the shares. These include not being allowed to vote on them or transfer them or receive payments from the company in respect of them. The FSA can also apply to the courts to order the sale of the shares. The Government intends to maintain these powers for the FSA.

3.12 This gives rise to a question. Consider a person who already owns 8 per cent of the shares in a company (for which no permission is necessary) and improperly buys another 3 per cent. This takes their holding over the threshold at 10 per cent. What proportion of their shares should therefore be subject to restriction or to an order for sale? There are three possibilities: the entire holding (in this case, 11 per cent), the improperly acquired amount (3 per cent), or the amount which caused the threshold to be crossed (just over 1 per cent in this example).

3.13 The Government proposes that restrictions, which are likely to be temporary, can be applied to the entire holding. The Government proposes that when the court orders the sale of shares it must take into account the level of holding that could have been acquired without contravening the FSA's objections or conditions.

Question 8: Do you agree with the proposed approach to restriction notices and orders for sale?

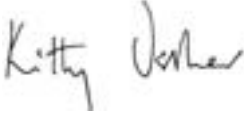
A

LIST OF QUESTIONS

- Question 1: Do you have any comments with regard to the draft Statutory Instrument set out at Annex C?
- Question 2: Do you have any comments with regard to the changes the FSA propose to make to its Handbook as set out at Annex D?
- Question 3: Do you agree that the UK should have a threshold at 30 per cent (rather than 33 per cent)?
- Question 4: Do you agree that it should be possible to stop the clock for 30 days in the case of non-authorized and non-EC acquirers?
- Question 5: Do you agree with the respondents to the previous consultation and hence with the Government's proposal to simplify the regime for non-directive firms by having a single threshold at 20 per cent?
- Question 6: Would you find it helpful if the provisions concerning acquisitions of holdings in investment exchanges were amended to improve consistency with the regime for other financial institutions?
- Question 7: Do you agree that £5000 is not a sufficient deterrent and therefore there should be the possibility of an unlimited fine after a trial by jury?
- Question 8: Do you agree with the proposed approach to restriction notices and orders for sale?

B

IMPACT ASSESSMENT

Summary: Intervention & Options		
Department /Agency: HM Treasury (HMT) and Financial Services Authority (FSA)	Title: Impact Assessment of the implementation of the Acquisitions Directive	
Stage:	Version: 1	Date: 28 July 2008
Related Publications:		
Available to view or download at: http://www.hm-treasury.gov.uk/		
Contact for enquiries: Michael Jampel		Telephone: 020 7270 5173
What is the problem under consideration? Why is government intervention necessary? Certain attempted acquisitions in other Member States were blocked on doubtful grounds. The EU Acquisitions Directive (AD) aims to prevent this. We must implement the AD despite there being no market or regulatory failure in the UK . Also it should benefit UK firms. Transposition requires changes to the Financial Services and Markets Act (FSMA) by HMT, and consequently to FSA rules and responsibilities. We have included in this Consultation Document/Impact Assessment some deregulatory proposals previously consulted on by HMT which are linked to, but not required by, the AD, which should reduce costs for non directive firms.		
What are the policy objectives and the intended effects? The proposed changes discussed in this Consultation Document are intended to reduce the cost and improve the efficiency of the existing "change in control" regime, while ensuring the level of regulatory protection against unsuitable acquirers is not reduced. There are also proposals contained in this consultation document to reduce notification and reporting requirements for non-directive firms, which are deregulatory and remove super-equivalent rules (and move to reliance on the FSA's Principles for Business).		
What policy options have been considered? Please justify any preferred option. "Do nothing" would lead to infraction proceedings, and damage the UK's position and reputation as the leading financial centre in the EU. We propose a "copy out" approach to the AD, which leads to the majority of the changes proposed in this Consultation Document. Modifying FSMA, rather than just changing FSA rules, is required so that the changes apply to all potential acquiring firms. (There will also be consequential changes to FSA rules and supervisory responsibilities.)		
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The Commission and member states will review the application of the Acquisitions Directive two years after implementation and will present a report to the European Parliament.		
Ministerial Sign-off For SELECT STAGE Impact Assessments: <i>I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.</i> Signed by the responsible Minister: Date: 22 September 2008.		

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The implementation of the AD is unlikely to impose significant additional costs on firms as it is primarily intended to enhance the regulatory approvals process and provide greater legal certainty, clarity and transparency. One-off implementation cost to Financial Services Authority estimated at £150 000.
	One-off (Transition)	Yrs	
	£ 150 000		
	Average Annual Cost (excluding one-off)		
	£ 0		Total Cost (PV) £ 150 000
Other key non-monetised costs by 'main affected groups' The AD is unlikely to impose significant additional costs on firms. However, firms may incur one-off system costs with the proposed move from the 33% threshold to the 30% threshold. (We are consulting on this change.)			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The proposals to reduce our notification and reporting requirements for non-directive firms down to a single notification are deregulatory and will remove super-equivalent rules. It is estimated that each notification costs a firm around £2000 and that perhaps about 5% of the current 2000 notifications will no longer be needed.
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£ 200 000		Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups' The implementation of the AD should enhance competition within the Single Market for financial services. This will benefit both firms and consumers. Non Directive firms will benefit from moving from a four threshold regime to a single threshold regime of 20 per cent. Firms exempt from notification will also benefit.			

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		EU		
On what date will the policy be implemented?		21 March 2009		
Which organisation(s) will enforce the policy?		FSA		
What is the total annual cost of enforcement for these organisations?		£ 150000 (one off)		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		Yes/No		
What is the value of the proposed offsetting measure per year?		£		
What is the value of changes in greenhouse gas emissions?		£		
Will the proposal have a significant impact on competition?		Yes/No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease of £	Net Impact	£

Kev: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

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The existing banking, insurance and securities EU directives require all persons proposing to gain significant influence over authorised firms to apply for pre-approval from the target firm's home state regulator. They also require authorised firms to notify their home state regulator of changes in their controllers when they occur and also in an annual report. The Financial Services and Markets Act (FSMA) "change in control" regime extends similar requirements to most authorised firms.

The pre-approval requirement is an important tool to help maintain the reputation of EU financial markets and protect consumers. However, the requirement places considerable power in the hands of individual home state regulators. The Acquisitions Directive goes some way towards addressing industry concerns that the existing regime is open to abuse by regulators, by requiring 'maximum harmonisation' of the time period for assessment, assessment criteria and requirements for consultation between member states.

The existing assessment period will be reduced by 5 working days to 60 working days and the Directive also permits a single interruption of up to 20 working days if further information is required. This consultation document also contains proposals to extend the maximum interruption period to 30 working days for 3rd country acquirers or persons not authorised under the EU single market directives. The directive also includes additional transparency and collaboration requirements. FSMA already imposes similar domestic requirements (e.g. the publication of reasons for a negative decision), therefore the FSA does not envisage any significant impact on its current processes. The directive also confirms that the FSA can oppose an acquisition when the information from a proposed acquirer is incomplete. Therefore, from a UK perspective we expect the impact of the process changes to be minimal.

The Directive more tightly defines the assessment criteria and will require a departure from the FSA's current approach. Notably, the Directive will no longer permit the FSA to take consumer protection concerns into account when assessing a potential acquisition. Also, powers of opposition regarding incoming passporting firms are limited.

The Directive allows Member States to keep a threshold at 33 per cent rather than 30 per cent. However, in the interest of simplicity for firms, we do not intend to take up this option. This is so that firms which operate internationally will ideally be faced with equivalent regimes in each Member State. The UK will therefore have four thresholds of 10, 20, 30 (current threshold being 33 per cent) and 50 per cent. Firms may incur a one off system change to accommodate the move from 33 per cent to 30 per cent – we are consulting on this proposal, to gauge stakeholder views.

The Directive also introduces a number of new exemptions from the pre-approval requirements which will help reduce the notification burden placed on the industry where appropriate. These exemptions, which mainly derive from a cross reference to the Transparency Directive, apply to voting rights or shares held in an underwriting capacity. This is provided that the shares are not used to intervene in the management of the issuer. Voting rights held by a firm acting in a custodial capacity, or acquired for the sole purpose of clearing and settling, are also exempt (provided custodians can only exercise voting rights under instructions given in writing or by electronic means).

The implementation of the Directive should create greater legal certainty, clarity and transparency for competent authorities as well as market participants. This in turn should tackle regulatory barriers to cross-border consolidation identified by the EU Commission and therefore enhance competition within the Single Market for financial services. This should benefit both firms and consumers: firms will have increased opportunities to access markets in other Member States as well as carrying out business effectively on a cross-border basis, while consumers will have access to a wider range of more competitively priced financial services products. It is very difficult to quantify the specific improvement in competition from this regulation-related measure, as business factors will also be very important; but this proposal reduces one hurdle.

HMT has already consulted industry on a proposed departure from the existing approach and the approach in the Directive in relation to the notification thresholds for non-directive firms (i.e. categories of firm not covered by the Acquisitions Directive). For non-directive firms, the Government proposes a move from the existing four thresholds (10, 20, 33 and 50 per cent) to a single 20 per cent threshold. There will be a consequential change to FSA's rules to remove the requirement for regulated firms to notify any changes in their controllers crossing the 10, 33 or 50 per cent thresholds. There would be some cost savings for firms in reducing the complexity for non-directive firms that fall outside the scope of the Directive by moving from the current notification requirements to a single requirement. From a study conducted for the FSA in 2006, it was estimated that each notification costs a firm around £2000. A rough estimate is that around 5 per cent of notifications will no longer be needed; there were just under 2000 notifications last year, so if these estimates are approximately correct, there should be annual savings of £200,000.

A “copy-out” approach minimises the possibility of over-implementing the requirements of the Directive. This Directive is “maximum harmonisation”, which means that Member States are not allowed to impose stricter rules than those in the Directive; therefore a copy-out approach demonstrates precise compliance as well as avoiding super-equivalence (“gold-plating”).

Re the specific questions on page 2 of the assessment (above):

- The FSA has been assessed as complying well with Hampton principles
- The implementation does not add to the minimum EU requirements. However, its subject matter is slightly wider than EU requirements because we propose to **deregulate** and simplify the existing regime for firms not covered by the directive.
- The implementation should increase competition. So in that sense it has a positive, not negative, impact.

Re the other specific impact tests in the checklist on the next page:

- Small firms impact test: the Directive aims to improve legal certainty, clarity and transparency of a supervisory process, in order to tackle regulatory barriers to cross-border consolidation. This should benefit firms of all sizes wishing to move into other Member States' markets.

The following have also been considered in this assessment:

- Legal aid
- Sustainable development
- Carbon assessment and other environment
- Health
- Race, disability, gender equality

- Human rights
- Rural proofing.

There is no impact on the above issues.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No



DRAFT LEGISLATION

Draft Regulations laid before Parliament under section 2(2) of the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Controllers) Regulations 2009

<i>Laid before Parliament</i>	***
<i>Made</i> - - - -	***
<i>Coming into force</i> - -	21st March 2009

The Treasury are a government department designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to credit and financial institutions.

The Treasury, in exercise of the powers conferred upon them by section 2(2) of the European Communities Act 1972, make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Controllers) Regulations 2009 and come into force on 21st March 2009.

Interpretation

2. In these Regulations—

“the Act” means the Financial Services and Markets Act 2000^(c);

“the Authority” means the Financial Services Authority.

Amendments to the Financial Services and Markets Act 2000

3. Sections 177A to 191 as set out in Schedule 1 have effect in place of the existing sections 178 to 191 of the Act (control over UK authorised persons).

4. Chapter 1A as set out in Schedule 2 has effect in place of the existing Chapter 1A of Part 18 of the Act (control over recognised investment exchanges).

5. Section 422 as set out in Schedule 3 has effect in place of the existing section 422 of the Act (controller).

(a) See the European Communities (Designation) (No.3) Order 2001 (S.I. 2001/3495).

(b) 1972 c.68.

(c) 2000 c.8.

Transitional arrangements

6. Provisions in section 178 of the Act (obligation to notify the Authority) as amended by these Regulations apply to notices received under section 178 of the Act before being amended, save that—

- (a) if the notice complies with the requirements of section 182 of the Act (notification) (as amended by these Regulations) the Authority must write to acknowledge receipt and to confirm the assessment period expiry date, calculated on the basis of the date on which the Authority received the notice; and
- (b) if the notice does not comply with the requirements of section 182 of the Act (as amended by these Regulations) the Authority must write to the applicant to notify him or her that the application is incomplete.

7. Provisions in section 301A of the Act (obligation to notify the authority of acquisition of control) as amended by these Regulations apply to notices received under section 301A of the Act before amendment.

8. A person who acquires control or increased control, reduces increased control or ceases to have control merely by virtue of the substitution of provisions by these Regulations is not required to notify the Authority of the change.

Names

Two of the Lords Commissioners of Her Majesty's Treasury

th 2009

SCHEDULE 1

Regulation 3

“177A Interpretation

(1) In this Part—

“acquisition” means acquisition of control or increased control over a UK authorised person;

“assessment period expiry date” means the expiry date of the assessment period calculated in accordance with subsection (1) of section 182A (acknowledgment of receipt and assessment period), subject to any interruption period;

“shares” has the same meaning as in section 422 (controller);

“UK authorised person” means an authorised person who—

- (a) is a body incorporated in, or an unincorporated association formed under the law of, any part of the United Kingdom; and
- (b) is not a person authorised as a result of paragraph 1 of Schedule 5;

“voting power” has the same meaning as in section 422.

(2) For the purposes of this Part, a “working day” is a day other than—

- (a) a Saturday or a Sunday,
- (b) a Saturday or a Sunday,
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(a).

178 Obligation to notify the Authority: acquisitions of control

(1) A person who has decided to acquire (whether alone or acting in concert)—

- (a) control over a UK authorised person; or
 - (b) increased control over a UK authorised person,
- must first give the Authority notice in writing.

(2) A person who acquires (whether alone or acting in concert)—

- (a) control over a UK authorised person; or
- (b) increased control over a UK authorised person,

in circumstances where he or she is not required to give notice under subsection (1), must give the Authority notice in writing before the end of the period of 14 days beginning with the day on which he or she first became aware of the acquisition.

(3) For the purposes of this Part—

- (a) a notice given under this section is an “application notice”; and
- (b) the person giving such notice is “the applicant”.

178A Exceptions to obligations to notify

(1) The obligations under sections 178 and 190 do not apply—

- (a) in respect of shares acquired for the sole purposes of clearing and settling within a short settlement cycle;

(a) 1971 c. 80.

- (b) to a custodian holding shares in its custodian capacity, provided that the custodian can only exercise the voting power attached to the shares under instructions given in writing or by electronic means;
- (c) in respect of shares or voting power held by a credit institution or an investment firm as a result of—
 - (i) providing the underwriting of financial instruments;
 - (ii) placing financial instruments on a firm commitment basis in accordance with point 6 of section A of Annex I of the markets in financial instruments directive,

provided that voting power is not exercised or otherwise used to intervene in the management of the issuer and that the holding is disposed of within one year of acquisition.

- (2) In this section “credit institution” means—
 - (a) a credit institution authorised under the banking consolidation directive, or
 - (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA state.

Acquiring control and other changes of holding

179 Acquiring control

(1) For the purposes of this Part, a person acquires control over a person (“A”) who is a UK authorised person upon first falling within any of the cases in subsection (2).

- (2) The cases are where the person (whether alone or acting in concert) holds—
 - (a) 10% or more of the shares in A or in a parent undertaking (“P”) of A;
 - (b) 10% or more of the voting power in A or in P; or
 - (c) a shareholding or voting power in A or P as a result of which he or she is able to exercise significant influence over the management of A by virtue of that shareholding or voting power.

180 Increasing control

(1) For the purposes of this Part, a person acquires increased control over a person (“A”) who is a UK authorised person whenever—

- (a) the percentage of shares he or she holds (whether alone or acting in concert) in A or a parent undertaking (“P”) of A increases by any of the steps mentioned in subsection (2);
- (b) the percentage of voting power he or she holds (whether alone or acting in concert) in A or P increases by any of the steps mentioned in subsection (2);
- (c) he or she becomes a parent undertaking of A.

(2) The steps are—

- (a) from below 20% to 20% or more but less than 30%;
- (b) from below 30% to 30% or more but less than 50%;
- (c) from below 50% to 50% or more.

181 Reducing control

(1) For the purposes of this Part, a person reduces his or her increased control over a person (“A”) who is a UK authorised person whenever—

- (a) the percentage of shares which (whether alone or acting in concert) he or she holds in A or a parent undertaking (“P”) of A decreases by any of the steps mentioned in subsection (2),
 - (b) the percentage of voting power which (whether alone or acting in concert) he or she holds in A or P decreases by any of the steps mentioned in subsection (2),
 - (c) he or she ceases to be a parent undertaking of A.
- (2) The steps are—
- (a) from 50% or more to 30% or more but less than 50%;
 - (b) from 30% or more to 20% or more but less than 30%;
 - (c) from 20% or more to 10% or more but less than 20%.
- (3) For the purposes of this Part, a person ceases to have control over a person (“A”) who is a UK authorised person if he or she ceases (whether alone or acting in concert) to have any of the following—
- (a) 10% or more of the shares in A or a parent undertaking (“P”) of A;
 - (b) 10% or more of the voting power in A or P;
 - (c) a shareholding or voting power in A or P as a result of which he or she is able to exercise significant influence over the management of A by virtue of that shareholding or voting power.

Notification and assessment procedure

182 Notification

- (1) An application notice must—
- (a) be in writing;
 - (b) be in such form, include such information and be accompanied by such documents as the Authority may reasonably require;
 - (c) in relation to an acquisition, include details of the size of the applicant’s intended holding in the UK authorised person;
 - (d) in relation to an existing holding, include details of the size of the applicant’s holding in the UK authorised person; and
 - (e) if the applicant is acting in concert, include details.
- (2) The Authority must make publicly available a list of the information required in the application notice and the documents which must accompany it.

182A Acknowledgment of receipt and assessment period

- (1) The Authority must acknowledge receipt in writing, promptly and in any event within two working days following receipt of—
- (a) a completed application notice and the documents required in accordance with section 182;
 - (b) any further information requested in accordance with section 182B.
- (2) The assessment period (before taking into account any interruption period) must be no longer than sixty working days from the date the Authority acknowledges receipt of the completed application notice and the documents required in accordance with section 182.
- (3) The Authority must inform the applicant about the duration of the assessment period and its expiry date—
- (a) when acknowledging receipt of the application notice; and
 - (b) if, in accordance with section 182B, the expiry date changes by virtue of any interruption period.

182B Requests for further information

- (1) The Authority may, no later than the 50th working day of the assessment period, request any further information that is necessary to complete its assessment.
- (2) Such a request must—
 - (a) be made in writing to the applicant; and
 - (b) specify the additional required information.
- (2) The assessment period is interrupted for the period between the date of the first request for further information and the date the Authority receives the requested information (“the interruption period”).
- (3) The interruption period may not exceed—
 - (a) thirty working days if the applicant—
 - (i) is situated or regulated outside the European Community; or
 - (ii) is not subject to supervision under a relevant directive; otherwise,
 - (b) twenty working days.
- (4) The Authority may further request completion or clarification of the information but any such request does not result in a further interruption of the assessment period.
- (5) The relevant directives for the purpose of this section are—
 - (a) Directive 1985/611/EEC of 20th December 1985, the UCITS directive;
 - (b) Directive 1992/49/EC of 18th June 1992 on insurance (other than life assurance);
 - (c) Directive 2002/83/EC of 5th November 2002 on life assurance;
 - (d) Directive 2004/39/EC of 21st April 2004 on markets in financial instruments (MiFID);
 - (e) Directive 2005/68/EC of 16 November 2005 on reinsurance; and
 - (f) Directive 2006/48/EC, the banking consolidation directive.

183 Duty of Authority to decide the application

- (1) During the assessment period, the Authority must determine whether it proposes to—
 - (a) approve the acquisition—
 - (i) unconditionally; or
 - (ii) subject to conditions; or
 - (b) object to the acquisition.
- (2) The Authority must comply with such requirements as to prior consultation with competent authorities outside the United Kingdom as may be prescribed.
- (3) Where the Authority approves the acquisition unconditionally, it must notify the applicant of its approval without delay.
- (4) The Authority must give a warning notice if it proposes to—
 - (a) approve the acquisition subject to conditions; or
 - (b) object to the acquisition.
- (5) The Authority must serve any warning notice under this section within two working days of its determination and, in any event, no later than the assessment period expiry date.
- (6) If the Authority fails to comply with the requirements of this section it is to be treated as having given its approval and notified the person concerned at the end of the assessment period (taking account of any interruption period).

184 Assessment and criteria

- (1) The authority must assess the suitability of the applicant and the financial soundness of the proposed acquisition against the criteria in subsection (3)—

- (a) in order to ensure the sound and prudent management of the UK authorised person in which the acquisition is proposed, and
 - (b) having regard to the likely influence of the applicant on the authorised person.
- (2) The Authority may object to the acquisition by giving a decision notice, but only if—
- (a) there are reasonable grounds for doing so on the basis of the criteria set out in subsection (3); or
 - (b) the information provided by the applicant is incomplete, and the Authority has given a warning notice under section 183(4)(b).
- (3) The criteria are—
- (a) the reputation of the applicant;
 - (b) the reputation and experience of any person who will direct the business of the authorised person as a result of the proposed acquisition;
 - (c) the financial soundness of the applicant, in particular in relation to the type of business pursued and envisaged in the authorised person in which the acquisition is proposed;
 - (d) whether the authorised person will be able to comply and to continue to comply with its prudential requirements (including the threshold conditions in relation to all of the regulated activities for which it has or will have permission);
 - (e) if the authorised person is to become part of a group as a result of the acquisition, whether that group has a structure which makes it possible to—
 - (i) exercise effective supervision,
 - (ii) effectively exchange information among competent authorities, and
 - (iii) determine the allocation of responsibility among competent authorities; and
 - (f) whether there are reasonable grounds to suspect that in connection with the proposed acquisition—
 - (i) money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted; or
 - (ii) the risk of such activity could increase as a result of such an acquisition.
- (4) In making the assessment, the Authority must disregard the economic needs of the market.
- (5) If the Authority gives a notice under this section but considers that the application would be approved if the person to whom a notice is given were to take, or refrain from taking, a particular step, the notice must identify that step.
- (6) A person to whom a notice under this section is given may refer the matter to the Tribunal.

185 Approval with conditions: further provisions

- (1) The Authority may approve an acquisition subject to conditions by giving a decision notice, but only if it has given a warning notice under section 183(4)(a).
- (2) The Authority may not impose conditions in respect of the level of holding that must be acquired.
- (3) The Authority must have regard to whether the authorised person will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which it has or will have permission.
- (4) The Authority may vary or cancel a condition imposed under this section.
- (5) If the Authority has given its approval to an application subject to conditions, the applicant may—
- (a) apply to the Authority for conditions to be varied or cancelled;

- (b) refer to the Tribunal—
 - (i) the imposition or variation of the condition; or
 - (ii) the Authority's decision to refuse an application made by him or her for conditions to be varied or cancelled.

186 Duration of approval

Approval (whether with or without conditions) remains effective only if the person to whom it relates makes the acquisition in question—

- (a) before the end of such period as the Authority may specify in its notice; or
- (b) if no period is specified, before the end of the period of one year beginning with the date—
 - (i) of the notice confirming approval;
 - (ii) on which the Authority is treated as having given approval under subsection (6) of section 183; or
 - (iii) of a decision on a reference to the Tribunal which results in the person concerned receiving approval.

187 Objection following failure to notify

(1) Where a person has failed to comply with an obligation to give notice in accordance with section 178, the Authority may determine whether it proposes to—

- (a) approve the acquisition—
 - (i) unconditionally; or
 - (ii) subject to conditions; or
- (b) object to the acquisition.

(2) In doing so, the Authority must—

- (a) comply with such requirements as to prior consultation with competent authorities outside the United Kingdom as may be prescribed; and
- (b) where it proposes to approve the acquisition subject to conditions, have regard to whether the authorised person will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which it has or will have permission.

(3) The Authority—

- (a) may only approve the acquisition if it is satisfied that it would not have opposed the acquisition if the proper notice had been given; and
- (b) if it is so satisfied, must notify the applicant of its approval without delay.

(4) The Authority must give a warning notice if it proposes to—

- (a) approve the acquisition subject to conditions; or
- (b) object to the acquisition.

(5) Where the Authority decides, in accordance with this section to—

- (a) approve an acquisition subject to conditions; or
- (b) object to the acquisition,

it must give a decision notice.

(6) A person to whom a notice under this section is given may refer the matter to the Tribunal.

188 Objection following default

(1) Where a person has control or increased control over a UK authorised person (whether acquired alone or acting in concert) and the Authority becomes aware of matters as a result of which it is satisfied that—

- (a) a condition imposed under section 185 required that person to do (or refrain from doing) a particular thing and the condition has been breached as a result of him or her failing to do (or doing) that thing, or
- (b) the criteria in section 184(3) are not met with respect to that person;

the Authority may, having regard to its duty under section 184(1), give a warning notice to that person.

(2) The Authority must, in the warning notice, specify a period after which it may serve a decision notice.

(3) After the period specified in the warning notice, where the Authority is satisfied that—

- (a) the a breach of the condition imposed under section 185 has not been remedied, or
- (b) it is still the case that the criteria in section 184(3) are not to be met with respect to the person;

it may give a decision notice.

(4) A person to whom a notice under this section is given may refer the matter to the Tribunal.

189 Restriction notices

(1) The Authority may serve a notice in writing (a “restriction notice”) on any person who has acquired, or continues to hold, shares in any of the following circumstances—

- (a) the acquisition or continued holding of the shares contravenes a condition specified by the Authority in—
 - (i) a warning notice under section 183(4)(a), 187(4)(a) or 188(1)(a); or
 - (ii) a decision notice under section 185(1), 187(5)(a) or 188(2)(a);
- (b) the acquisition or continued holding of the shares contravenes an objection specified by the Authority in—
 - (i) a warning notice under section 183(4)(b), 187(4)(b) or 188(1)(b); or
 - (ii) a decision notice under section 184(2), 187(1)(b) or 188(2)(b);
- (c) the person failed to comply with an obligation to give notice in accordance with 178, and the Authority has not approved the acquisition (with or without conditions) under section 187;
- (d) the Authority has given a warning notice or a decision notice under section 188.

(2) In a restriction notice, the Authority may direct that shares specified in the notice are, until further notice, subject to one or more of the following restrictions—

- (a) except by court order, an agreement to transfer or a transfer of those shares, or in the case of unissued shares any agreement to transfer or transfer of the right to be issued with them, is void;
- (b) no voting rights are to be exercisable in respect of the shares;
- (c) no further shares are to be issued in right of them or in pursuance of any offer made to their holder;
- (d) except in a liquidation, no payment is to be made of any sums due from the body corporate on the shares, whether in respect of capital or otherwise.

(3) In the restriction notice, the Authority may specify that the restrictions apply to any shares that the person holds in the UK authorised person.

(4) A restriction notice takes effect—

- (a) immediately if the notice states that this is the case; or
- (b) on such date as may be specified in the notice.

(5) A copy of the restriction notice must be served on the authorised person to whose shares it relates.

(6) A person upon whom a restriction notice is served may refer the matter to the Tribunal.

189A Orders for sale of shares

(1) The court may, on the application of the Authority, order the sale of any shares which a person acquired, or continues to hold, in contravention of—

- (a) a decision notice under section 184(2), 187(1)(b) or 188;
- (b) a condition specified by the Authority in a decision notice under section 185(1) or 187(5)(a).

(2) Where the court orders the sale of shares under this section it may—

- (a) if the shares are subject to a restriction notice, order that they cease to be subject to its restrictions upon sale; and
- (b) make such further order relating to the sale or transfer of the shares as it thinks fit.

(3) Where the court orders the sale of shares under this section, it must take into account the level of holding that the person would have been entitled to acquire, or to continue to hold, without contravening a decision notice or a condition specified by the Authority.

(4) No order may be made for the sale of shares under this section—

- (a) until the end of the period within which a reference may be made to the Tribunal in respect of the contravened decision notice or condition; and
- (b) if a reference is made, until the matter has been determined or the reference withdrawn.

(5) If shares are sold in pursuance of an order under this section, the proceeds of sale, less the costs of the sale, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him or her.

(6) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.

Reducing control: procedure

190 Obligation to notify the Authority: dispositions of control

(1) A person who has control or increased control over a UK authorised person (whether he or she acquired it alone or by acting in concert) and has decided, whether alone or acting in concert, to—

- (a) reduce his or her increased control over the UK authorised person; or
 - (b) cease to have control over the UK authorised person,
- must first give the Authority notice in writing.

(2) A person who, whether alone or acting in concert—

- (a) reduces his or her increased control over a UK authorised person; or
- (b) ceases to have control over a UK authorised person,

in circumstances where he or she is not required to give notice under subsection (1), must give the Authority notice in writing before the end of the period of 14 days beginning with the day on which he or she first becomes aware of the change.

- (1) A notice given under this section must—
 - (a) be in such form, include such information and be accompanied by such documents as the Authority may reasonably require;
 - (b) include details of the size of the applicant's holding in the UK authorised person; and
 - (c) if the applicant is acting in concert, include details.

Offences

191 Offences under this Part

(1) A person who fails to comply with an obligation to notify the Authority imposed on him or her by section 178 or 190 is guilty of an offence.

(2) A person who gives notice to the Authority under subsection (1) of section 178 and makes the acquisition to which the notice relates before the assessment period expiry date is guilty of an offence unless the Authority has—

- (a) approved the acquisition unconditionally; or
- (b) proposed to approve the acquisition subject to conditions.

(3) A person to whom the Authority has given a warning notice under section 183(4)(b) (confirming that it proposes to object to an acquisition) is guilty of an offence if he or she carries out the acquisition before the Authority has decided whether to give him or her a decision notice.

(4) A person to whom the Authority has given a decision notice under section 184(2) (that it objects to an acquisition) is guilty of an offence if he or she makes the acquisition while the notice is still in force.

(5) A person who makes an acquisition after the Authority's approval for the acquisition has ceased to be effective by virtue of section 186 (duration of approval) is guilty of an offence.

(6) Where the Authority gives approval for an acquisition subject to conditions, or proposes to do so, a person who makes the acquisition in contravention of a condition specified by the Authority is guilty of an offence.

(7) A person who, under this Part, provides information to the Authority which is false in any material particular is guilty of an offence.

(8) A person guilty of an offence under subsection (1) to (3) or (5) to (7) is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to a fine.

(9) A person guilty of an offence under subsection (4) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(10) A person guilty of an offence under subsection (4) is also liable on summary conviction to a fine not exceeding one tenth of the statutory maximum for each day on which the offence has continued.

(11) It is a defence for a person charged with an offence under subsection (1) to show that he or she had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the Authority arose."

SCHEDULE 2

Regulation 4

“Chapter 1A

CONTROL OVER RECOGNISED INVESTMENT EXCHANGE

*Acquiring or increasing control***301ZA Interpretation**

(1) In this Chapter—

“acquisition” means acquisition of control or increased control over a recognised investment exchange;

“shares” has the same meaning as in section 422 (controller);

“voting power” has the same meaning as in section 422.

301A Obligation to notify the Authority: acquisition of control

(1) A person who has decided to acquire, whether alone or acting in concert—

- (a) control over a recognised investment exchange; or
 - (b) increased control over a recognised investment exchange,
- must first give the Authority notice in writing.

(2) A person who acquires, whether alone or acting in concert—

- (a) control over a recognised investment exchange; or
- (b) increased control over a recognised investment exchange,

in circumstances where he or she is not required to give notice under subsection (1), must give the Authority notice in writing before the end of the period of 14 days beginning with the day on which he or she first became aware of the acquisition.

(3) For the purposes of this Chapter—

- (a) a notice given under this section or the following section is an “application notice”;
- (b) the person giving such notice is “the applicant”.

301B Exceptions to obligations to notify

(1) The obligations under section 301A do not apply—

- (a) in respect of shares acquired for the sole purposes of clearing and settling within a short settlement cycle;
- (b) to a custodian holding shares in its custodian capacity, provided that the custodian can only exercise the voting power attached to the shares under instructions given in writing or by electronic means;
- (c) in respect of shares or voting power held by a credit institution or an investment firm as a result of—
 - (i) providing the underwriting of financial instruments;
 - (ii) placing financial instruments on a firm commitment basis in accordance with point 6 of section A of Annex I of the markets in financial instruments directive,

provided that voting power is not exercised or otherwise used to intervene in the management of the issuer and that the holding is disposed of within one year of acquisition.

- (2) In this section “credit institution” means—
- (a) a credit institution authorised under the banking consolidation directive, or
 - (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA state.

Acquiring control

301C Acquiring control

(1) For the purposes of this Chapter, a person acquires control over a person (“A”) who is a recognised investment exchange upon first falling within any of the cases in subsection (2).

- (2) The cases are where the person (whether alone or acting in concert) holds—
- (a) 20% or more of the shares in A or in a parent undertaking (“P”) of A;
 - (c) 20% or more of the voting power in A or in P; or
 - (e) a shareholding or voting power in A or P as a result of which he or she is able to exercise significant influence over the management of A by virtue of that shareholding or voting power.

(3) For the purposes of this Chapter, a person acquires increased control over A whenever—

- (a) the percentage of shares he or she holds in A or P increases from below 50% to 50% or more;
- (b) the percentage of voting power he or she holds in A or P increases from below 50% to 50% or more;
- (c) he or she becomes a parent undertaking of A.

301D Notification

(1) An application notice given under section 301A must—

- (a) be in writing;
- (b) be in such form, include such information and be accompanied by such documents as the Authority may reasonably require;
- (c) in relation to an acquisition, include details of the size of the applicant’s intended holding in the recognised investment exchange;
- (d) in relation to an existing holding, include details of the size of the applicant’s holding in the recognised investment exchange; and
- (e) if the applicant is acting in concert, include details.

(2) The Authority must make publicly available a list of the information required in the application notice and the documents which must accompany it.

301E Duty of Authority to decide the application

(1) The assessment period is a period of three months from the date the Authority receives the completed application notice.

(2) During the assessment period, the Authority must determine whether it proposes to approve or object to the acquisition.

(3) Where the Authority approves the acquisition, it must notify the applicant of its approval without delay.

(4) Where the Authority proposes to object to the acquisition, it must give a warning notice no later than the end of the assessment period.

(5) If the Authority fails to comply with the requirements of this section it is to be treated as having given its approval and notified the person concerned at the end of the assessment period.

301F Assessment and approval requirement

(1) The Authority must assess the suitability of the applicant and the financial soundness of the proposed acquisition—

- (a) in order to ensure the sound and prudent management of the recognised investment exchange in which the acquisition is proposed, and
- (b) having regard to the likely influence of the applicant on the investment exchange.

(2) The Authority may object to the acquisition by giving a decision notice, but only if—

- (a) the Authority is not satisfied that the approval requirement is met; or
- (b) the information provided by the applicant is incomplete.

(3) The approval requirement is that the acquisition in question by the applicant does not pose a threat to the sound and prudent management of any financial market operated by the recognised investment exchange.

(4) If the Authority gives a notice under this section but considers that the application would be approved if the person to whom a notice is given were to take, or refrain from taking, a particular step, the notice must identify that step.

(5) A person to whom a notice under this section is given may refer the matter to the Tribunal.

301G Duration of approval

Approval remains effective only if the person to whom it relates makes the acquisition in question—

- (a) before the end of such period as the Authority may specify in the notice; or
- (b) if no period is specified, before the end of the period of one year beginning with the date—
 - (i) of the notice confirming approval;
 - (ii) on which the Authority is treated as having given approval under subsection (5) of section 301E; or
 - (iii) of a decision on a reference to the Tribunal which results in the person concerned receiving approval.

301H Objection following failure to notify

(1) Where a person has failed to comply with an obligation to give notice in accordance with section 301A the Authority may determine whether it proposes to approve or object to the acquisition.

(2) The Authority—

- (a) may only approve the acquisition if it is satisfied that it would not have opposed the acquisition if the proper notice had been given; and
- (b) if it is so satisfied, must notify the applicant of its approval without delay.

(3) The Authority must give a warning notice if it proposes to object to the acquisition.

(4) Where the Authority decides to object to the acquisition, it must give a decision notice.

(5) A person to whom a notice under this section is given may refer the matter to the Tribunal.

301I Objection following default

(1) Where the Authority becomes aware of matters as a result of which it is satisfied that the approval requirement in section 301F(3) is not met with respect to a person, it may give that person a warning notice.

(2) The Authority must, in the warning notice, specify a period after which it may serve a decision notice.

(3) After the period specified in the warning notice, where the Authority is satisfied that it is still the case that the approval requirement in section 301F(3) is not met with respect to the person, it may give a decision notice.

(4) A person to whom a notice under this section is given may refer the matter to the Tribunal.

301J Restriction notices

(1) The Authority may serve a notice in writing (a “restriction notice”) on any person who has acquired, or has continued to hold, shares in any of the following circumstances—

- (a) the acquisition, or continued holding of the shares, contravenes an objection specified by the Authority in—
 - (i) a warning notice under section 301E(4), 301H(3) or 301I(1);
 - (ii) a decision notice under section 301F(2), 301H(4) or 301I(2); or
- (b) the person failed to comply with an obligation to give notice in accordance with 301A, and the Authority has not approved the acquisition under section 301H.

(2) In a restriction notice, the Authority may direct that the shares specified in the notice are, until further notice, subject to one or more of the following restrictions—

- (a) except by court order, an agreement to transfer or a transfer of those shares, or in the case of unissued shares any agreement to transfer or transfer of the right to be issued with them, is void;
- (b) no voting rights are to be exercisable in respect of the shares;
- (c) no further shares are to be issued in right of them or in pursuance of any offer made to their holder;
- (d) except in a liquidation, no payment is to be made of any sums due from the body corporate on the shares, whether in respect of capital or otherwise.

(3) In the restriction notice, the Authority may specify that the restrictions apply to any shares that the person holds in the UK recognised investment exchange.

(4) A restriction notice takes effect—

- (a) immediately if the notice states that this is the case; or
- (b) on such date as may be specified in the notice.

(5) A copy of the restriction notice must be served on the investment exchange to whose shares it relates.

(6) A person on whom a restriction notice is served may refer the matter to the Tribunal.

301K Orders for sale of shares

(1) The court may, on the application of the Authority, order the sale of any shares which a person acquired, or continues to hold, in contravention of a decision notice under section 301F(2), 301H(4) or 301I(2).

(2) Where the court orders the sale of shares under this section it may—

- (a) if the shares are subject to a restriction notice, order that they cease to be subject to its restrictions upon sale; and
- (b) make such further order relating to the sale or transfer of the shares as it thinks fit.

(3) Where the court orders the sale of shares under this section, it must take into account the level of holding that the person would have been entitled to acquire, or to continue to hold, without contravening the decision notice.

(4) No order may be made for the sale of shares under this section—

- (a) until the end of the period within which a reference may be made to the Tribunal in respect of the decision notice or approval condition; and
- (b) if a reference is made, until the matter has been determined or the reference withdrawn.

(5) If shares are sold in pursuance of an order under this section, the proceeds of sale, less the costs of the sale, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him or her.

(6) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.

Offences

301L Offences under this Chapter

(1) A person who fails to comply with a duty to notify the Authority imposed on him or her by section 301A is guilty of an offence.

(2) A person who gives notice to the Authority under subsection (1) of section 301A and makes the acquisition to which the notice relates before the end of the assessment period is guilty of an offence unless the Authority has approved the acquisition.

(3) A person to whom the Authority has given a warning notice under section 301E(4) (confirming that it proposes to object to an acquisition) is guilty of an offence if he or she carries out the acquisition before the Authority has decided whether to give him or her a decision notice.

(4) A person to whom the Authority has given a decision notice under section 301F(2) (that it objects to an acquisition) is guilty of an offence if he or she makes the acquisition while the notice is still in force.

(5) A person who makes an acquisition after the Authority's approval for the acquisition has ceased to be effective by virtue of section 301G (duration of approval) is guilty of an offence.

(6) A person who, under this Chapter, provides information to the Authority which is false in any material particular is guilty of an offence.

(7) A person guilty of an offence under subsection (1) to (3), (5) or (6) is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to a fine.

(8) A person guilty of an offence under subsection (4) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(9) A person guilty of an offence under subsection (4) is also liable on summary conviction to a fine not exceeding one tenth of the statutory maximum for each day on which the offence has continued.

(10) It is a defence for a person charged with an offence under subsection (1) to show that he or she had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the Authority arose.”

SCHEDULE 3

Regulation 5

“422 Controller

(1) In this Act “controller”, in relation to an undertaking (“A”), means a person who falls within any of the cases in subsection (2).

(2) The cases are where the person (whether alone or acting in concert)—

- (a) holds 10% or more of the shares in A or in a parent undertaking (“P”) of A;
- (b) holds 10% or more of the voting power in A or in P; or
- (c) is able to exercise significant influence over the management of A by virtue of his or her shareholding or voting power in A or P.

(3) Subsection (2) does not apply—

- (a) in respect of shares acquired for the sole purposes of clearing and settling within a short settlement cycle;
- (b) to a custodian holding shares in its custodian capacity, provided that the custodian can only exercise the voting power attached to the shares under instructions given in writing or by electronic means;
- (c) in respect of shares or voting power held by a credit institution or an investment firm as a result of—
 - (i) providing the underwriting of financial instruments;
 - (ii) placing financial instruments on a firm commitment basis in accordance with point 6 of section A of Annex I of the markets in financial instruments directive,

provided that voting power is not exercised or otherwise used to intervene in the management of the issuer and that the holding is disposed of within one year of acquisition.

(4) In paragraph (3)(c) “credit institution” means—

- (a) a credit institution authorised under the banking consolidation directive, or
- (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA state.

(5) In this section “shares”—

- (a) in relation to an undertaking with a share capital, means allotted shares;
- (b) in relation to an undertaking with capital but no share capital, means rights to share in the capital of the undertaking;
- (c) in relation to an undertaking without capital, means interests—
 - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the undertaking; or
 - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

(6) In this section, “voting power”—

- (a) includes, in relation to a person (“H”)—
 - (i) voting power held by a third party with whom H has concluded an agreement, which obliges H and the third party to adopt, by concerted exercise of the

voting power they hold, a lasting common policy towards the management of the undertaking in question;

- (ii) voting power held by a third party under an agreement concluded with H providing for the temporary transfer for consideration of the voting power in question;
 - (iii) voting power attaching to shares which are lodged as collateral with H, provided that H controls the voting power and declares his or her intention of exercising it;
 - (iv) voting power attaching to shares in which H has the life interest;
 - (v) voting power which is held, or may be exercised within the meaning of subparagraphs (i) to (iv), by an undertaking controlled by H;
 - (vi) voting power attaching to shares deposited with H which H can exercise at his or her discretion in the absence of specific instructions from the shareholders;
 - (vii) voting power held by a third party in his or her own name on behalf of H;
 - (viii) voting power which H may exercise as a proxy where H can exercise the voting power at his or her discretion in the absence of specific instructions from the shareholders; and
- (b) in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.

(7) For the purpose of determining voting power, a management company (as defined in Article 1a.2 of the UCITS directive) and its parent undertaking—

- (a) need not aggregate their holdings, provided that they exercise their voting power independently of each other; but
- (b) must aggregate their holdings if the management company —
 - (i) manages holdings for its parent undertaking or an undertaking in respect of which the parent undertaking is a controller;
 - (ii) has no discretion to exercise the voting power attached to such holdings; and
 - (iii) may only exercise the voting power in relation to the holding under direct or indirect instruction from its parent undertaking or an undertaking in respect of which of the parent undertaking is a controller.

(8) For the purpose of determining voting power, an investment firm and its parent undertaking need not aggregate holdings of the parent undertaking with holdings managed by the investment firm on a client by client basis, provided that the investment firm—

- (a) has permission to provide portfolio management;
- (b) exercises its voting power independently from the parent; and
- (c) may only exercise the voting rights attached to such shares under instructions given in writing or by electronic means; or
- (d) has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Financial Services and Markets Act 2000 (c.8) (FSMA) in order to give effect to directive 2007/44/EC of the European Parliament and Council (the acquisitions directive) and for related purposes. The acquisitions directive concerns the prudential assessment procedure and criteria to be applied where a decision has been taken to acquire a substantial holding in a financial services firm. The acquisitions directive amends EC directives relating to credit institutions, investment firms, and insurance firms.

The Regulations implement the acquisition directive by replacing certain provisions in Part 12 of FSMA (control over authorised persons). It also replaces Chapter 1A of Part 18 (Control over recognised investment exchanges) and definitions in section 422 (controller) with provisions that are consistent with the new provisions in Part 12. The new provisions, set out in Schedules 1 to 3 of these Regulations, are incorporated into FSMA by virtue of Regulations 3, 4 and 5. Regulations 6 to 8 make transitional arrangements.

The changes made to Part 12 of FSMA affect persons acquiring or increasing a significant holding in a UK authorised person. The changes to Chapter 1A of Part 18 affect persons acquiring or increasing a significant holding in a recognised investment exchange.

Schedule 1 contains new sections 177A to 191 to replace sections 178 to 191 of FSMA.

Section 177A contains definitions for Part 12.

Section 178, subsection (1), imposes a duty on any person who has decided to acquire control or increased control over a UK authorised person to first give the Financial Services Authority (the Authority) notice in writing. Subsection (2) imposes an equivalent duty on a person who has acquired control or increased control in circumstances where he or she is not required to give notice under subsection (1).

Subsection 178A provides certain exceptions to the duties to notify. These exceptions relate to the clearing and settling of share transactions; custodians; the holdings of credit institutions or investment firms relating to the underwriting of financial instruments and the placing of financial instruments on a firm commitment basis.

Section 179 specifies the circumstances in which a person acquires control. This may be by way of direct acquisition of 10% or more of the shares or voting power in the firm; indirectly, by such an acquisition in its parent company or by acquiring the power to exercise significant influence over the management of the firm by virtue of a shareholding or voting power in the firm or its parent.

Section 180 specifies the circumstances in which a person increases control. This is by increasing the percentage of shares or voting power in the firm or its parent past thresholds of 20%, 30% or 50% or by becoming a parent of the firm.

Section 181 specifies the circumstances in which a person reduces his or her increased control or ceases to have control: the reverse of the acquisitions specified in sections 179 and 180.

Section 182 confirms the formalities for the required application notice, including that the Authority must make publicly available a list of the information required and accompanying documents.

Section 182A requires the Authority to acknowledge receipt of the application notice promptly, and in any event within two working days. Subsection (2) specifies that the assessment period must be no longer than 60 working days (before taking into account any interruption period).

Section 182B permits an interruption to the assessment period if the Authority requests further information necessary to complete the assessment. The interruption period may not exceed 20 working days, or 30 working days if the applicant is situated or regulated outside the community

or is not subject to supervision under one of the financial services directives specified in the section.

Section 183 requires the Authority, within the assessment period, to determine whether it proposes to approve the application unconditionally or subject to conditions or to object to the acquisition. The Authority must give a warning notice if it proposes to impose conditions or object to the acquisition.

Section 184 specifies the prudential criteria against which the Authority must make its assessment.

Section 185 specifies the procedure for approving an acquisition subject to conditions.

Sections 186 makes provision about the duration within which an approval remains effective for the purpose of an acquisition.

Section 187 gives the Authority power to approve (unconditionally or subject to conditions) or object to an acquisition where a person has failed to comply with a duty to notify under section 178.

Section 188 gives the Authority power to give a warning notice to a person with control or increased control over a UK authorised person if the Authority is satisfied that a condition it imposed under section 185 has been breached or if the prudential assessment criteria are not met.

Section 189 gives the Authority power to serve a restriction notice if a person has acquired shares or continued to hold them in contravention of a warning notice or decision notice under these provisions. The restrictions that the Authority may impose by way of a restriction notice are: that transfers of shares are void; that no voting rights in respect of the shares may be exercised; that rights issues are not to take place in respect of the shares and that payments on the shares are not to be made. The Authority may specify that the restrictions apply to any of the shares the person holds in a UK authorised person.

Section 189A gives the Court power, on the application of the Authority, to order sale of shares acquired or continued to be held in contravention of a decision notice.

Section 190. subsection (1) imposes a duty on a person who has decided to reduce his or her increased control or to cease to have control over a UK authorised person to give the Authority notice in writing. Subsection (2) imposes an equivalent duty on a person who has reduced his or her increased control or has ceased to have control over a UK authorised person in circumstances where he or she is not required to give notice under subsection (1).

Section 191 imposes criminal penalties in relation to the new Part 12 requirements.

Schedule 2 contains a new Chapter 1A of Part 18 of FSMA to replace the existing Chapter 1A. This Chapter gives effect to the requirement in Article 38 of Directive 2004/39/EC on markets in financial instruments (MIFID) to regulate the acquisition of investment exchanges. The new Chapter 1A gives effect to this requirement in a manner consistent with the new provisions in Part 12.

Section 301ZA contains definitions for Chapter 1A.

Section 301A, subsection (1), imposes a duty on any person who had decided to acquire control or increased control of a recognised investment exchange to first give the Authority notice in writing. Subsection (2) imposes an equivalent duty on a person who has acquired control or increased control in circumstances where he or she is not required to give notice under subsection(1).

Subsection 301B provides certain exceptions to the duties to notify, equivalent to the provisions in section 178A referred to above.

Section 301C, subsection (1), specifies the circumstances in which a person acquires control. This may be by way of direct acquisition of 20% or more of the shares or voting power in the recognised investment exchange; indirectly, by such an acquisition in its parent company or by acquiring the power to exercise significant influence over the management of the exchange by

virtue of a shareholding or voting power in the firm or its parent. Subsection (2) specifies the circumstances in which a person increases control. This is by increasing the percentage of shares or voting power in the firm or its parent past 50% or by becoming a parent of the investment exchange.

Section 301D confirms the formalities for the required application notice, including that the Authority must make publicly available a list of the information required and accompanying documents.

Section 301E requires the Authority to determine, within 3 months of receipt, whether it proposes to approve or reject the application. If it proposes to object, it must give a warning notice.

Section 301F specifies the prudential criteria against which the Authority must make its assessment.

Section 301G makes provision about the duration within which an approval remains effective for the purpose of an acquisition.

Section 301H gives the Authority power to approve or object to an acquisition where a person has failed to comply with a duty to notify under section 178.

Section 301I gives the Authority power to give a warning notice to a person with control or increased control over a recognised investment exchange if the Authority is satisfied that the prudential assessment criteria are not met.

Section 301J gives the Authority power to serve a restriction notice if a person has acquired shares or continued to hold them in contravention of a warning notice or decision notice under these provisions. The restrictions that the Authority may impose by way of a restriction notice are: that transfers of shares are void; that no voting rights in respect of the shares may be exercised; that rights issues are not to take place in respect of the shares and that payments on the shares are not to be made. The Authority may specify that the restrictions apply to any of the shares the person holds in a UK authorised person.

Section 301K gives the Court power, on the application of the Authority, to order sale of shares acquired or continued to be held in contravention of a decision notice.

Section 301L imposes criminal penalties in relation to the requirements in this Chapter.

Schedule 3 of these Regulations contains a new section 422 of FSMA.

Section 422, subsection (1) and (2), specify that a person is a “controller” of an undertaking if he or she holds 10% or more of the shares or voting power in the undertaking or its parent company or if he or she is able to exercise significant influence over the management of the firm by virtue of a shareholding or voting power in the undertaking or its parent.

Subsection (3) contains exceptions equivalent to those in section 178A referred to above.

Subsections (4) and (5) contain definitions of credit institutions and shares.

Subsection (6) contains a definition of voting power. The categories set out in this schedule derive from Article 10 of directive 2004/109/EC, the transparency directive, (OJ L 390, 31.12.2006, p.38.).

Subsection (7) specifies that a UCITS management company must or need not aggregate its holdings with its parent for the purposes of the controller provisions. This derives from Article 12.4 of the transparency directive.

Subsection (8) specifies that the holdings of a parent undertaking of an investment firm need not aggregate its holdings with holdings independently managed by the investment firm on a client by client basis. This derives from Article 12.5 of the transparency directive.

An impact assessment of the effect of this instrument on the costs of business may be obtained from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is available on the Treasury's website (www.hm-treasury.gov.uk).

SUPERVISION MANUAL (CONTROLLERS) (AMENDMENT) INSTRUMENT 2009**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [21 March 2009].

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.
- F. The Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC) is amended in accordance with Annex C to this instrument.

Citation

- G. This instrument may be cited as the Supervision Manual (Controllers) (Amendment) Instrument 2009

By order of the Board
[2009]

Annex A

Amendments to the Glossary of definitions

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

<u>application notice</u>	a notification given to the <i>FSA</i> under section 178 of the <i>Act</i> .
<u>control</u>	<p>...</p> <p><u>(3) for the purposes of SUP 11 (Controllers and Close Links) and SUP 16 (Reporting Requirements) a person acquires control over a firm ("A") upon first falling within any of the cases in (2) below:</u></p> <p><u>(4) The cases are where the person (whether alone or acting in concert) holds:</u></p> <p style="padding-left: 40px;"><u>(a) 10% or more of the shares in A or in a parent undertaking ("P") of A;</u></p> <p style="padding-left: 40px;"><u>(b) 10% or more of the voting power in A or in P; or</u></p> <p style="padding-left: 40px;"><u>(c) a shareholding or voting power in A or P as a result of which he or she is able to exercise significant influence over the management of A by virtue of that shareholding or voting power.</u></p> <p><u>(5) For the purposes of SUP 11 (Controllers and Close Links) and SUP 16 (Reporting Requirements) a person ceases to have control over a firm ("A") if he or she ceases (whether alone or acting in concert) to have any of the following:</u></p> <p style="padding-left: 40px;"><u>(a) 10% or more of the shares in A or a parent undertaking ("P") of A;</u></p> <p style="padding-left: 40px;"><u>(b) 10% or more of the voting power in A or P;</u></p> <p style="padding-left: 40px;"><u>(c) a shareholding or voting power in A or P as a result of which he or she is able to exercise significant influence over the management of A by virtue of that shareholding or voting power.</u></p>
<u>controller</u>	<p>(1) (in relation to a firm or other undertaking ("A")) other than an UK insurance intermediary) (in accordance with section 422 of the Act (Controller)) a person who falls within any of the following cases; the cases are where the person:</p> <p style="padding-left: 40px;">(a) holds 10% or more of the shares in A; or</p> <p style="padding-left: 40px;">(b) is able to exercise significant influence over the management of A through his shareholding in A; or</p> <p style="padding-left: 40px;">(c) holds 10% or more of the shares in a parent undertaking ("P") of</p>

A; or

~~(d) is able to exercise significant influence over the management of P through his shareholding in P; or~~

~~(e) is entitled to exercise, or control the exercise of, 10% or more of the voting power in A; or~~

~~(f) is able to exercise significant influence over the management of A through his voting power in A; or~~

~~(g) is entitled to exercise, or control the exercise of, 10% or more of the voting power in P; or~~

~~(h) is able to exercise significant influence over the management of P through his voting power in P;~~

~~(2) (in relation to an UK insurance intermediary) (in accordance with article 17 of the Insurance Intermediaries Order) a person who would fall within (1) if 20% were substituted for 10%;⁵ in (1) and (2) of this definition:⁵~~

~~(i) "the person" means:~~

~~(A) the person; or~~

~~(B) any of the person's associates; or~~

~~(C) the person and any of his associates;~~

~~(ii) "associate", in relation to a person ("H") holding shares in an undertaking ("C") or entitled to exercise or control the exercise of voting power in relation to another undertaking ("D"), means:~~

~~(A) the spouse⁴⁴ or civil partner of H;~~

~~(B) a child or stepchild of H (if under 18);~~

~~(C) the trustee of any settlement under which H has a life interest in possession (or in Scotland a life interest);~~

~~(D) an undertaking of which H is a director;~~

~~(E) a person who is an employee or partner of H;~~

~~(F) if H is an undertaking:~~

~~(I) a director of H;~~

~~(II) a subsidiary undertaking of H;~~

~~(III) a director or employee of such a subsidiary undertaking; and~~

~~(G) if H has with any other *person* an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in C or D or under which they undertake to act together in exercising their *voting power* in relation to C or D, that other *person*;~~

~~(iii) "settlement" includes any disposition or arrangement under which property is held on trust (or subject to a comparable obligation);~~

~~(iv) "shares" means:~~

~~(A) in relation to an *undertaking* with a share capital, allotted shares;~~

~~(B) in relation to an *undertaking* with capital but no share capital, rights to share in the capital of the *undertaking*;~~

~~(C) in relation to an *undertaking* without capital, interests:~~

~~(I) conferring any right to share in the profits, or liability to contribute to the losses, of the *undertaking*, or~~

~~(II) giving rise to any obligation to contribute to the debts or expenses of the *undertaking* in the event of a winding up.~~

(1) (in relation to a *firm* or other undertaking ("A"), other than a *UK insurance intermediary* or a *non directive firm*), a person who (whether acting alone or in concert);

(a) holds 10% or more of the shares in A or in a *parent undertaking* ("P") of A;

(b) holds 10% or more of the voting power in A or in P; or

(c) is able to exercise significant influence over the management of A by virtue of his shareholding or voting power in A or P.

(2) (in relation to a *UK insurance intermediary* or a *non directive firm*) a person who (whether acting alone or in concert):

(a) holds 20% or more of the shares in A or in a *parent undertaking* ("P") of A;

(b) holds 20% or more of the voting power in A or in P.

(3) for the purposes of (1) and (2):

(a) a person does not 'hold shares' in respect of shares acquired for the sole purposes of clearing and settling within

a short settlement cycle;

(b) paragraphs (1)(a) to (c) and (2)(a) and (b) do not apply to a custodian holding shares in its custodian capacity, provided that the custodian can only exercise the voting power attached to such shares under instructions given in writing or by electronic means;

(c) paragraphs (1)(a) to (c) and (2)(a) and (b) do not apply in respect of shares or voting power held by a credit institution or an investment firm as a result of:

(i) providing the underwriting of financial instruments;

(ii) placing financial instruments on a firm commitment basis in accordance with point 6 of section A of Annex I of the markets in financial instruments directive;

provided that voting power is not exercised or otherwise used to intervene in the management of the issuer and that the holding is disposed of within one year of acquisition;

(d) "credit institution" in (3)(c) means:

(i) a credit institution authorised under the banking consolidation directive; or

(ii) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA state;

(e) "shares" means:

(i) in relation to an undertaking with a share capital, allotted shares;

(ii) in relation to an undertaking with capital but no share capital, rights to share in the capital of the undertaking;

(iii) in relation to an undertaking without capital, interests:

(A) conferring any right to share in the profits, or liability to contribute to the losses, of the undertaking; or

(B) giving rise to an obligation to contribute

to the debts or expenses of the undertaking in the event of a winding up.

(f) “voting power”:

(i) includes, in relation to a person (“H”):

(A) voting power held by a third party with whom H has concluded an agreement, which obliges H and the third party to adopt, by concerted exercise of the voting power they hold, a lasting common policy towards the management of the undertaking in question;

(B) voting power held by a third party under an agreement concluded with H providing for the temporary transfer for consideration of the voting power in question;

(C) voting power attaching to shares which are lodged as collateral with H, provided that H controls the voting power and declares his intention of exercising it;

(D) voting power attaching to shares in which H has the life interest;

(E) voting power which is held, or may be exercised within the meaning of subparagraphs (i) to (iv), by an undertaking controlled by H;

(F) voting power attaching to shares deposited with H which H can exercise at his discretion in the absence of specific instructions from the shareholders;

(G) voting power held by a third party in his own name on behalf of H;

(H) voting power which H may exercise as a proxy where H can exercise the voting power at his discretion in the absence of specific instructions from the shareholders; and

(ii) in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution;

(g) for the purpose of determining voting power, a management company (as defined in Article 1a.2 of the UCITS directive) and its *parent undertaking*:

(i) need not aggregate their holdings, provided that they exercise their voting power independently of each other; but

(ii) must aggregate their holdings if the management company:

(A) manages holdings for its *parent undertaking* or an undertaking in respect of which the *parent undertaking* is a *controller*;

(B) has no discretion to exercise the voting power attached to such holdings; and

(C) may only exercise the voting power in relation to the holding under direct or indirect instruction from its *parent undertaking* or an undertaking in respect of which of the *parent undertaking* is a *controller*;

(h) for the purpose of determining voting power, an *investment firm* and its *parent undertaking* need not aggregate holdings of the *parent undertaking* with holdings managed by the *investment firm* on a client by client basis, provided that the *investment firm*:

(i) has permission to provide portfolio management;

(ii) exercises its voting power independently from the parent; and

(iii) may only exercise the voting rights attached to such shares under instructions given in writing or by electronic means; or

(iv) has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.

increase control

a person acquires *increased control* in a *firm* (“A”) when:

(a) the percentage of shares he or she holds in A or a *parent undertaking* (“P”) of A increases by any of the steps mentioned below;

(b) the percentage of voting power he or she holds in A or P increases by any of the steps mentioned below;

(c) he becomes a *parent undertaking* of A.

The steps are:

(a) from below 20% to 20% or more but less than 30%;

(b) from below 30% to 30% or more but less than 50%;

(c) from below 50% to 50% or more.

non directive firm

[It is our intention to insert a definition in here which accords with the description of non directive firms contained in paragraph 3.1 of the consultation document.]

reduce control

a person (whether alone or acting in concert) reduces his or her *increased control of a firm* (“A”) whenever:

(a) the percentage of shares which he or she holds in A or a *parent undertaking* (“P”) of A decreases by any of the steps mentioned below;

(b) the percentage of voting power which he or she is entitled to exercise, or control the exercise of, in A or P decreases by any of the steps mentioned below;

(c) he ceases to be a *parent undertaking* of A.

The steps are:

(a) from 50% or more to 30% or more but less than 50%;

(b) from 30% or more to 20% or more but less than 30%;

(c) from 20% or more to 10% or more but less than 20%.

restriction notice

a notice served under section 189 of the *Act*.

Annex B

Amendments to the Supervision manual (SUP)

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

Controller and close links

11.1 Application

Application to firms

11.1.1 R This chapter applies to every *firm* except:

- (1) an *ICVC*;
- (2) an *incoming EEA firm*;
- (3) an *incoming Treaty firm*;
- (4) [deleted]
- (5) a *sole trader*;
- (6) a *UCITS qualifier*;

as set out in the table in *SUP* 11.1.2R .

11.1.2 R Applicable sections (see *SUP* 11.1.1R)

	Category of firm	Applicable sections
(1)	A <i>UK domestic firm</i> other than a <i>building society</i> , a non-directive friendly society or a <i>UK insurance intermediary</i> or a <u><i>non directive firm</i></u>	All except <i>SUP</i> 11.3, <i>SUP</i> 11.4.2AR, <u><i>SUP</i> 11.4.2BR</u> and <i>SUP</i> 11.4.4 R
(1A)	A <i>building society</i>	(a) In the case of an exempt change in <i>control</i> (see Note), <i>SUP</i> 11.1, <i>SUP</i> 11.2 and <i>SUP</i> 11.9 (b) In any other case, all except <i>SUP</i> 11.3, <i>SUP</i> 11.4.2AR, <u><i>SUP</i> 11.4.2BR</u> and <i>SUP</i> 11.4.4R
(2)	A <i>non-directive friendly society</i>	<i>SUP</i> 11.1, <i>SUP</i> 11.2, and <i>SUP</i> 11.9
(2A)	A <i>UK insurance intermediary</i>	all except <i>SUP</i> 11.3, <i>SUP</i> 11.4.2R, <u><i>SUP</i> 11.4.2BR</u> <i>SUP</i>

		11.4.3G and SUP 11.4.4R
(3)	An overseas firm	All except SUP 11.3, SUP 11.4.2R, SUP 11.4.2AR, SUP 11.4.2BR, SUP 11.4.3 , SUP 11.4.9G, SUP 11.5.8G to SUP 11.5.10G, SUP 11.6.2R, SUP 11.6.3R, SUP 11.6.6G , SUP 11.7
(4)	A non-directive firm	All except SUP 11.3, SUP 11.4.2R and SUP 11.4.2AR
Note	In row (1A), a change in <i>control</i> is exempt if the <i>controller</i> or proposed <i>controller</i> is exempt from any obligation to notify the FSA under Part XII of the <i>Act</i> (Control over Authorised Persons) because of The Financial Services and Markets Act 2000 (Controllers) (Exemption) (No 2) Order 2001 (SI 2001/3338). (See SUP 11.3.2AG).	

- 11.1.3 G This chapter may apply to *directive friendly societies* in the circumstances described in SUP 16.4.2 G (1) to (3).

Application to controllers

- 11.1.4 D SUP 11.1, SUP 11.2.1G, SUP ~~11.3~~ 11.3 and SUP 11.7 apply to a *controller* or a proposed *controller* of a UK domestic firm not listed in SUP 11.1.1 R(1) to SUP 11.1.1R(6).
- 11.1.5 G This chapter may apply to *controllers* and *proposed controllers* of *directive friendly societies* in the circumstances described in SUP 16.4.2G(1) to (3).

11.2 Purpose

- 11.2.1 G Part XII of the *Act* (Control over authorised persons) places an obligation on the *controllers* and proposed *controllers* of those UK domestic firms not listed in SUP 11.1.1R(1) to SUP 11.1.1R(6) to notify the FSA of changes in *control*. Furthermore, those *persons* are required to obtain the FSA's approval before becoming a *controller* or increasing the level of *control held* acquiring *increased control* (in certain circumstances). SUP 11.3 is intended to assist those *persons* in complying with their obligations under Part XII of the *Act* and also sets out the information which a *controller* or proposed *controller* must provide to the FSA before becoming a *controller* or increasing the level of *control held*.
- 11.2.2 G The *rules* in SUP 11.4 to SUP 11.6 are aimed at ensuring that the FSA receives information it needs from firms to assist the FSA with its responsibility to monitor and, in some cases, give prior approval to firms' *controllers*.

- 11.2.2A G Part XII of the *Act* does not place an obligation on a *controller* of a *UK insurance intermediary* to notify the *FSA* where it becomes or ceases to be a *parent undertaking*. Nevertheless, the rule in SUP 11.4.2AR(2) requires the *UK insurance intermediary* to notify the *FSA* of *parent undertakings* so that the *FSA* can monitor the *firm's* continuing satisfaction of the *threshold conditions*, which includes consideration of its *controllers* and *parent undertakings* (see *COND*).
- 11.2.2B G Part XII of the *Act* does not place an obligation on a *controller* of a *non directive firm* to notify the *FSA* where it becomes or ceases to be a *parent undertaking*. However, SUP 11.4.2BR requires the *non directive firm* to notify the *FSA* of *parent undertakings* so that the *FSA* can monitor the *firm's* continuing satisfaction of the *threshold conditions*, which includes consideration of its *controllers* and *parent undertakings* (see *COND*).
- 11.2.3 G As the approval of the *FSA* 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*. Nevertheless, the *FSA* 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 *FSA* therefore needs to be notified of *controllers* and *parent undertakings* of *overseas firms*.
- 11.2.4 G As part of the *FSA's* function of monitoring a *firm's* continuing satisfaction of the *threshold conditions*, the *FSA* needs to consider the impact of any significant change in the circumstances of one or more of its *controllers*, for example, in their financial standing and, in respect of corporate *controllers*, in their *governing bodies*. Consequently, the *FSA* needs to know if there are any such changes. SUP 11.8 therefore requires a *firm* to tell the *FSA* if it becomes aware of particular matters relating to a *controller*.
- 11.2.5 G Similarly, the *FSA* needs to monitor a *firm's* continuing satisfaction of *threshold condition 3* (Close links) (see *COND* 2.3), which requires that a *firm's close links* are not likely to prevent the *FSA's* effective supervision of that *firm*. Accordingly the *FSA* needs to be notified of any changes in a *firm's close links*. This requirement is contained in SUP 11.9.
- 11.2.6 G Every *firm*, other than a *firm* listed in SUP 11.1.1R(1) to SUP 11.1.1R(6) or a *firm* excluded from the operation of SUP 16.4 or SUP 16.5 by SUP 16.1.3R, is required to submit an annual report on its *controllers* and *close links* as set out in SUP 16.4 and SUP 16.5.
- 11.2.7 G The requirements in SUP 11 implement certain provisions relating to changes in *control* and *close links* required under the *Single Market Directives*.
- 11.2.8 G ~~An event described in SUP 11.4.2 R (1) to SUP 11.4.2 R (4) [and SUP 11.4.2AR(1) and SUP 11.4.2AR(2)] is referred to in this chapter as a "change in control". [deleted]~~

11.3 Requirements on controllers or proposed controllers under the Act

- 11.3.1 G The notification requirements are set out in sections 178, 182 and 190 of the Act and the exceptions are set out in section 178A of the Act. A summary of the notification requirements described in this section is given in SUP 11 Annex 1.

Requirement to notify a proposed change in control

- 11.3.2 G Sections 178(1) and 190(1) of the *Act* require a *person* (whether or not he is an *authorised person*) to notify the *FSA* in writing if he ~~proposes~~ has decided to take a step which would result in his acquiring control or acquire increased control or to reducing control or cease to have control in a *UK domestic firm* in a way described in ~~SUP 11.4.2 R (1) to SUP 11.4.2R (4), or acquiring or reducing his control in a way described in SUP 11.4.2 R (1) and (2).~~ Failure to notify is an offence under section 191(1) of the *Act* (Offences under this Part).

- 11.3.2A G The Treasury have made the following exemptions from the obligations under section 178:

- (1) *controllers* and potential *controllers* of *non-directive friendly societies* are exempt from the obligation to notify a change in *control* (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2001 (SI 2001/2638));
- (2) *controllers* and potential *controllers* of *building societies* are exempt from the obligation to notify a change in *control* unless the change involves the acquisition of a holding of a specified percentage of a society's capital or the increase or reduction by a specified percentage of a holding of a society's capital (The Financial Services and Markets Act 2000 (Controllers) (Exemption) (No.2) Order 2001 (SI 2001/3338.)). The "capital" of a society for these purposes consists of:
 - (a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 which have been issued by the society (in practice, likely to be permanent interest bearing shares (PIBS)); and
 - (b) the general reserves of the society.;
- (3) in respect of shares acquired for the sole purposes of clearing and settling within a short settlement cycle;
- (4) to a custodian holding shares in its custodian capacity, provided that the custodian can only exercise the voting power attached to such shares under instructions given in writing or by electronic means;
- (5) in respect of shares or voting power held by a credit institution or an

investment firm as a result of

- (a) providing the underwriting of financial instruments.
- (b) the placing of financial instruments on a firm commitment basis in accordance with point 6 of section A of Annex 1 of the Markets in Financial Instruments Directive;

for (5)(a) and (b) providing that voting power is not exercised or otherwise used to intervene in the management of the issuer and that the holding is disposed of within one year of acquisition.

11.3.3 G [deleted]

~~Approval required before acquiring or increasing control~~

11.3.4 G If a person ~~proposes~~ has decided to acquire *control* or increase his *control* over a UK domestic firm in a way described in SUP 11.4.2R (1) to (4) or acquire *control* in a way described in SUP 11.4.2AR(1) or SUP 11.4.2BR(1), he must obtain the FSA's approval before doing so. ~~Failure to obtain approval~~ Making an acquisition before the FSA has approved the acquisition unconditionally or has proposed to approve the acquisition subject to its conditions is an offence under section 191(32) of the Act (Offences under this Part). The FSA has up to three months to consider whether to approve such a change in control: see SUP 11.7 for guidance on the approval.

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

Pre-notification and approval for fund managers

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

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

- (1) that the firm proposes to acquire and/or dispose of *control*, on one or more occasions, of any UK domestic firm whose shares or those of its ultimate parent undertaking are, at the time of the acquisition or disposal of *control*, listed or which are admitted to listing on a designated investment exchange;
- (2) that any such acquisitions and/or disposals of *control* will occur only in

the course of the *firm's* business as an *investment manager*; ~~and~~

- (3) that the level of *control* the *firm* so acquires in the pre-approval period will at all times remain less than 20%; and
- (4) that the *firm* has no intention of exercising any influence over the *UK domestic firm* in which the shares are held.

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

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

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

~~Change in control without taking any step~~

11.3.6 G ~~If a change in *control* occurs without the *person* himself having taken any step, he must notify the *FSA* within 14 days of becoming aware of the change (sections 178(2) and 190(2) of the *Act*). Failure to notify is an offence under section 191(2) of the *Act*. [deleted]~~

~~Custodians obtaining control~~

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

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

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

Form of notification ~~when acquiring or increasing control~~

- 11.3.7 D A notification (~~"notice of control"~~) given to the *FSA* under section 178 (an "application notice") by a person who is acquiring control or ~~increasing his control~~ over a UK domestic firm, in a way described in SUP 11.4.2R, or acquiring control in a way described in SUP 11.4.2AR(1) or SUP 11.4.2BR(1), must:
- (1) ~~where the controller or a proposed controller is not an authorised person, contain the information and documents required in the relevant controllers form~~ application notice as well as details of the size of the applicant's intended holding in the firm and if the applicant is acting in concert, include details.;
 - (1A) ~~where the controller is a custodian or a nominee company notifying under SUP 11.3.6AG, comply with that direction;~~
 - (2) ~~where the controller or proposed controller is any other authorised person, contain the information required in the relevant controllers form; and~~
 - (3) ~~if a notification is not submitted on the relevant form specified in (1) or (2), provide reasons why that form was not used.~~
- 11.3.8 D [deleted]
- 11.3.9 D ~~If a relevant controllers form, or an Application to perform controlled functions under the approved persons regime (the relevant Form A in SUP 10 Annex 4) in respect of a governing function, has already been submitted to the FSA in relation to a relevant individual, then the information in that form need not be submitted to the FSA as long as details of any changes in the information previously submitted, or confirmation that there are none, is submitted. [deleted]~~
- 11.3.10 D (1) A person who has submitted a ~~notification~~ an application notice under SUP 11.3.7D must notify the *FSA* immediately if he becomes aware, or has information that reasonably suggests, that he has or may have provided the *FSA* with information which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed, in a material particular. The notification must include:
- (a) details of the information which is or may be false, misleading, incomplete or inaccurate, or has or may have changed;
 - (b) an explanation why such information was or may have been provided; and
 - (c) the correct information.
- (2) If the information in (1)(c) cannot be submitted with the ~~notification~~ application notice (because it is not immediately available), it must

instead be submitted as soon as possible afterwards.

- (3) The requirement in (1) ceases if the change in *control* occurs or will not take place.
- 11.3.11 G The *FSA*, ~~for administrative reasons,~~ expects notifications ~~within~~ under SUP 11.3.7D to be given on the relevant controllers form as appropriate. ~~If notifications are not made on these forms the applicant must inform the FSA of the reasons for not using them~~ an application notice.
- 11.3.12 G ~~If a controller or proposed controller considers that the requirements in SUP 11.3.7 D to SUP 11.3.9 D are not appropriate to his circumstances (for example, if control is temporary), he should consult the FSA. The FSA has power, under section 182(3) of the Act (Notification), to amend those requirements if it considers it appropriate to do so. [deleted]~~
- 11.3.13 G ~~The Act provides that the FSA may request any additional information or documentation from the controller or proposed controller that it reasonably requires in order to determine what action it is to take in response to the notification. A controller or proposed controller which is an authorised person is required to submit less information under SUP 11.3.7D than other persons and consequently the FSA may ask for confirmation of details already held or any additional information required under SUP 11.5.1R which it considers appropriate.~~
- 11.3.14 G The *FSA* is obliged to consult regulatory authorities in other *EEA States* before approving the change in *control* or giving a *warning notice* where the Financial and Services Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001 (SI 2001/2509, as amended) apply. The guidance on the consultation procedure is set out in [Level 3 guidance]. ~~In summary, these regulations require the FSA to consult with the home state regulator of an MiFID investment firm, a BCD credit institution, an EEA insure, an EEAUCITS management company or the parent undertaking of any of these, where that firm has acquired or proposes to acquire control of certain UK domestic firms such that the acquiring firm would become the parent undertaking of the relevant UK domestic firm. These regulations also impose certain consultation obligations on the FSA in respect of financial conglomerates.~~

~~Form of notification when reducing control~~

- 11.3.15 G A notification notice given to the *FSA* by a person who is ~~reducing his control~~ reducing control over a *UK domestic firm*, ~~in a way described as set out in~~ SUP 11.4.2 R (1) to (4), must, ~~in accordance with section 190(4) of the Act (Notification):~~
- (1) be in writing such form, include such information and be accompanied by such documents as the FSA may reasonably require; and
 - (2) provide details of the extent of control (if any) which the controller will have following the change in control include details of the size of the

controller's holding in the firm; and

(3) if the controller is acting in concert, include details.

~~Notification when change in control occurs~~

- 11.3.16 G ~~A person who is under a duty to notify the FSA of a proposed change in control is also required to notify the FSA when the relevant change in control has occurred (sections 178(3) and 190(3) of the Act). [deleted]~~

~~Joint and shared notifications~~

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

11.4 Requirements on firms

- 11.4.1 G A summary of the notification requirements in this section is given in SUP 11 Annex 1.

~~Requirement to notify a change in control~~

- 11.4.2 R ~~A UK domestic firm₂ other than a UK insurance intermediary or a non directive firm, must notify the FSA if a person becomes a controller of the firm or acquires increased control over the firm or reduces an increased control over the firm or ceases to be a controller of the firm. of any of the following events concerning the firm:~~

- ~~(1) a person acquiring control or ceasing to have control;~~
- ~~(2) an existing controller acquiring an additional kind of control or ceasing to have a kind of control;~~
- ~~(3) an existing controller increasing or decreasing a kind of control which he already has so that the percentage of shares or voting power concerned becomes or ceases to be equal to or greater than 20, 33 or 50;~~
- ~~(4) an existing controller becoming or ceasing to be a parent undertaking.~~

- 11.4.2A R A UK insurance intermediary must notify the FSA of any of the following events concerning the firm:

- (1) a person acquiring control;
- (2) in relation to an existing controller:
 - (a) the percentage of shares held in the firm decreasing from 20% or more to less than 20%; or

- (b) the percentage of *shares* held in a *parent undertaking* of the *firm* decreasing from 20% or more to less than 20%; or
 - (c) the percentage of *voting power* which it is entitled to exercise, or control the exercise of, in the *firm* decreasing from 20% or more to less than 20%; or
 - (d) the percentage of *voting power* which it is entitled to exercise, or control the exercise of, in a *parent undertaking* of the *firm* decreasing from 20% or more to less than 20%;
- (3) an existing *controller* becoming or ceasing to be a *parent undertaking*.

11.4.2B R A non directive firm must notify the FSA of any of the following events concerning the firm:

- (1) a person acquiring control;
- (2) in relation to an existing controller:
 - (a) the percentage of shares held in the firm decreasing from 20% or more to less than 20%; or
 - (b) the percentage of shares held in a parent undertaking of the firm decreasing from 20% or more to less than 20%; or
 - (c) the percentage of voting power which it is entitled to exercise, or control the exercise of, in the firm decreasing from 20% or more to less than 20%; or
 - (d) the percentage of voting power which it is entitled to exercise, or control the exercise of, in a parent undertaking of the firm decreasing from 20% or more to less than 20%;
- (3) an existing controller becoming or ceasing to be a parent undertaking.

11.4.3 G ~~SUP 11 Annex 2 gives examples of the circumstances in which a notification in accordance with SUP 11.4.2R is required. [deleted]~~

11.4.4 R An overseas firm must notify the FSA if a person becomes a controller of the firm or acquires increased control over the firm or reduces control over the firm or ceases to be a controller of the firm. of any of the following events concerning the firm:

- (1) ~~a person acquiring control or ceasing to have control;~~
- (2) ~~an existing controller becoming or ceasing to be a parent undertaking.~~

11.4.5 G ~~If there is uncertainty whether a particular relationship constitutes control, it may be appropriate for the firm or controller or proposed controller to ask the FSA for individual guidance (see SUP 9) and to obtain its own legal advice. For example, if the control is to be held through a trust, then certain trustees,~~

~~beneficiaries and other parties may qualify as *controllers* for the purposes of the *Act* and this chapter. Furthermore, a *person* may qualify as a *controller* if he is able to exercise 10%. (20% if the *firm* is a *UK insurance intermediary*) or more of the *voting power* at a *firm's* general meeting as a result of the ability to exercise proxy votes. [deleted]~~

- 11.4.6 G If a *firm* is required to obtain approval from the *Society of Lloyd's* for any changes in its *controllers*, it should apply for this approval as well as notifying the *FSA*.

Content and timing of the notification

- 11.4.7 R The notification by a *firm* under *SUP* 11.4.2R, *SUP* 11.4.2AR, *SUP* 11.4.2BR or *SUP* 11.4.4R must:

- (1) be ~~in writing~~ on an *application notice*;
- (2) contain the information set out in:
 - (a) in the case of acquiring or increasing *control*, *SUP* 11.5.1R (subject to *SUP* 11.5); or
 - (b) in the case of reducing *control*, *SUP* 11.5.7R; and
- (3) be made:
 - (a) as soon as the *firm* becomes aware that a *person* is ~~proposing to take a step that would result in the event concerned, whether alone or acting in concert, has decided to acquire *control* or increase or reduce *control*~~; or
 - (b) if the ~~event~~ change in *control* takes place without the knowledge of the *firm*, within 14 *days* of the *firm* becoming aware of the change in *control* concerned.

- 11.4.8 G *Principle* 11 requires *firms* to be open and cooperative with the *FSA*. A *firm* should discuss with the *FSA*, at the earliest opportunity, any prospective changes of which it is aware, in ~~*controllers'*~~ a *controller's* or proposed ~~*controllers'*~~ *controller's* shareholdings or *voting power* (if the change is material). These discussions may take place before the formal notification requirement in *SUP* 11.4.2R, *SUP* 11.4.2AR, *SUP* 11.4.2BR or *SUP* 11.4.4R arises. (See also *SUP* 11.3.2G). As a minimum, the *FSA* considers that such discussions should take place before a *person*:
- (1) enters into any formal agreement in respect of the purchase of shares or a proposed acquisition or merger which would result in a change in *control* (whether or not the agreement is conditional upon any matter, including the *FSA's* approval); or
 - (2) purchases any *share options*, *warrants* or other financial instruments, the exercise of which would result in the *person* acquiring *control* or

any other change in *control*.

- 11.4.9 G The ~~obligation~~ obligations in *SUP* 11.4.2R~~1~~ and *SUP* 11.4.2AR~~(1)~~ and *SUP* 11.4.2AR~~(2)~~ 11.4.2BR applies apply whether or not the *controller* himself has given or intends to give a notification, in accordance with his obligations under the *Act*.

Identity of controllers

- 11.4.10 R A *firm* must take reasonable steps to keep itself informed about the identity of its *controllers*.
- 11.4.11 G The steps that the *FSA* expects a *firm* to take to comply with *SUP* 11.4.10R include, if applicable:
- (1) monitoring its register of shareholders (or equivalent);
 - (2) monitoring notifications to the *firm* in accordance with Part 22 of the Companies Act 2006;
 - (3) monitoring public announcements made under the relevant disclosure provisions of the *Takeover Code* or other rules made by the *Takeover Panel*;
 - (4) monitoring the entitlement of delegates, or *persons* with voting rights in respect of group insurance contracts, to exercise or control *voting power* at general meetings.

11.5 ~~Form of notification by firms~~ Application Notice

- 11.5.1 R Information to be submitted with the *application notice* ~~by the firm~~ (see *SUP* 11.4.7R(2)(a))

(1)	The name of the <i>firm</i>; <u>The information to be submitted with the <i>application notice</i> is set out in [Appendix II, parts I and II of the level 3 guidance].</u>
(2)	the name of the <i>controller</i> or proposed <i>controller</i> and, if it is a <i>body corporate</i> and is not an <i>authorised person</i>, the names of its <i>directors</i> and its <i>controllers</i>;
(3)	a description of the proposed event including the shareholding and <i>voting power</i> of the <i>person</i> concerned, both before and after the proposed event; and
(4)	any other information of which the <i>FSA</i> would reasonably expect notice, including information which could have a material impact on any of the approval requirements in section 186(2) of the <i>Act</i> (see <i>SUP</i> 11.7.5 G) and any relevant supporting documentation.

- 11.5.2 R ~~The notification from a *firm* under SUP 11.4.7R(2)(a) need only contain as much of the information set out in SUP 11.5.1R as the *firm* is able to provide, having made reasonable enquiries from *persons* and other sources as appropriate. The information submitted under SUP 11.5.1R must be accurate and must not be false, misleading or deceptive (and the *person* acquiring control or increased control must attest to that).~~
- 11.5.3 G ~~Requests for further information may be made subject to section 182B of the *Act*. In determining what the *FSA* would reasonably expect notice of in accordance with row (4) in SUP 11.5.1R, a *firm* should have regard, in particular, to the following matters to the extent that the *firm* is aware of them:~~
- ~~(1) whether the *controller* intends to make any significant changes to the *firm's* or *firms'* regulated activities, business plan or strategy as a result of the change in control;~~
 - ~~(2) whether the *controller* intends any restructuring either in terms of the legal form of the *firm(s)* or in its or their borrowings, capital restructuring or financing arrangements;~~
 - ~~(3) whether the *FSA* is obliged to consult with regulatory authorities in other *EEA States* (see SUP 11.3.14G);~~
 - ~~(4) in the case of a share acquisition or similar, how it is to be financed;~~
 - ~~(5) whether the *controller* has any interests which may conflict with its role as *controller* of the *UK domestic firm*.~~
- ~~*Firms* are also reminded of the circumstances set out in SUP 15.3.8G (Communication with the *FSA* in accordance with Principle 11) which may arise on a change in control and which should also be notified.~~
- 11.5.4 G *Firms* are reminded that a change in control may give rise to a change in the group companies to which the *FSA's* consolidated financial supervision requirements apply. Also, the *firm* may for the first time become subject to the *FSA's* requirements on consolidated financial supervision (or equivalent requirements imposed by another *EEA State*). This may apply, for example, if the *controller* is itself an authorised *undertaking*. The *FSA* may therefore request such a *firm*, *controller* or proposed *controller* to provide evidence that, following the change in control, the *firm* will meet the requirements of these rules, if appropriate.
- 11.5.4A G *Firms* are also reminded that a change in control may give rise to a notification as a financial conglomerate or a change in the supplementary supervision of a financial conglomerate (see GENPRU 3.1 (Cross sector groups) and GENPRU 3.2 (Third country groups)).
- 11.5.5 G ~~If a *controller* proposes any significant changes to the *firm*, for instance to its regulated activities, business plan or strategy, the *firm* may be requested to provide a business plan (see SUP 2: Information gathering by the *FSA* on its own initiative). If an *insurer* comes under the control of a new parent *undertaking*, such a business plan would be a scheme of operations in~~

accordance with ~~SUP App 2~~. ~~[deleted]~~

- 11.5.6 G The *FSA* may request the *firm* to provide additional information (see ~~SUP 2 (Information gathering by the FSA on its own initiative)~~). In determining any additional information requirements, the *FSA* will have regard to the supervision being exercised over the *firm* by any ~~overseas regulators~~. ~~[deleted]~~

~~Form of notification when a person reduces control~~

- 11.5.7 R A notification of a proposed reduction in *control* must:
- (1) give the name of the *controller* be in such form, include such information and be accompanied by such documents as the *FSA* may reasonable require; and
 - (2) provide details of the extent of *control* (if any) which the *controller* will have following the change in *control* include details of the size of the *controller's* holding in the *firm*; and
 - (3) if the *controller* is acting in concert, include details.

~~Joint and shared notifications~~

- 11.5.8 G A *firm* and its *controller* or proposed *controller* may discharge an obligation to notify the *FSA* by submitting a single joint ~~notification~~ application notice containing the information required from the *firm* and the *controller* or proposed *controller*. In this case, the ~~relevant controllers form~~ application notice may be used to ~~submit a notification~~ on behalf of both the *firm* and the *controller* or proposed *controller*.
- 11.5.9 G If a *person* is proposing a change in *control* over more than one *firm* within a *group*, then the *controller* or proposed *controller* may submit a single ~~notification~~ application notice in respect of all those *firms*. The ~~notification~~ application notice should contain all the required information as if separate notifications had been made, but information and documentation need not be duplicated.
- 11.5.10 G When an event occurs (for example, a *group* restructuring or a merger) as a 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* by submitting a single ~~notification~~ application notice containing one set of information.

11.6 Subsequent notification requirements by firms

Changes in the information provided to the FSA

- 11.6.1 G *Firms* are reminded that *SUP* 15.6.4R requires them to notify the *FSA* if information notified under *SUP* 11.4.2R, *SUP* 11.4.2AR, *SUP* 11.4.2BR or *SUP* 11.4.4R was false, misleading, inaccurate, incomplete, or changes, in a material particular. This would include a *firm* becoming aware of information that it would have been required to provide under *SUP* 11.5.1R if it had been aware of it.
- 11.6.2 R After submitting ~~a notification~~ an *application notice* under *SUP* 11.4.2R, ~~*SUP* 11.4.2AR(1) and *SUP* 11.4.2AR(2)~~ *SUP* 11.4.2AR or *SUP* 11.4.2BR and until the change in *control* occurs (or is no longer to take place), *SUP* 15.6.4R and *SUP* 15.6.5R apply to a *UK domestic firm* in relation to any information its *controller* or proposed *controller* provided to the *FSA* under *SUP* 11.5.1R or *SUP* 11.3.7D .
- 11.6.3 R During the period in *SUP* 11.6.2R, a *UK domestic firm* must take reasonable steps to keep itself informed about the circumstances of the *controller* or the proposed *controller* to which the notification related.

Notification that the change in control has taken place

- 11.6.4 R A *firm* must notify the *FSA*:
- (1) when a change in *control* which was previously notified under *SUP* 11.4.2R, *SUP* 11.4.2AR, *SUP* 11.4.2BR or *SUP* 11.4.4R has taken place; or
 - (2) if the *firm* has grounds for reasonably believing that the event will not now take place.
- 11.6.5 R The notification under *SUP* 11.6.4R must be given within 14 *days* of the change in *control* or of having the grounds (as applicable).
- 11.6.6 G ~~A notification under *SUP* 11.6.4R may be given jointly with the notification of the *controller* under *SUP* 11.3.16G. [deleted]~~

11.7 Acquisition or increase of control: approval ~~procedures~~ process and criteria

- 11.7.1 G The approval ~~procedures~~ are summarised in *SUP* 11 Annex 3 process and the criteria for approval are set out in Sections 182A to 186 of the *Act*.

~~Approval with or without conditions~~

- 11.7.2 G ~~If the *FSA* decides to approve a proposed acquisition or increase of *control* unconditionally, it must give an 'approval notice' without delay (section 184(1) of the *Act*). Sections 187 and 188 deal with the procedure the *FSA* must follow where there has been a failure to notify or a default.~~

- 11.7.3 G ~~Alternatively, the FSA may decide to approve the proposed acquisition or increase of *control* subject to such conditions as it considers appropriate, having regard to the FSA's duty to ensure that the *firm* concerned will satisfy, and continue to satisfy, the *threshold conditions* (section 185 of the *Act*). The FSA may serve *restriction notices* in certain circumstances in accordance with section 189 of the *Act*.~~
- (1) ~~If the FSA proposes to approve subject to conditions, it must give a *warning notice*.~~
- (2) ~~If the FSA decides to proceed to approve subject to conditions, it must give a *decision notice*.~~
- 11.7.4 G ~~A notice which approves a change of control (with or without conditions) is effective only for a limited period as set out in the notice (or, if no such period is specified, for one year) (section 184(3) of the *Act*). An approved change in *control* may not therefore take place after the end of this period. The FSA may apply to the court for an order for the sale of *shares* in accordance with section 189A of the *Act*.~~

~~Approval requirements and objection~~

- 11.7.5 G ~~The FSA may object to a proposed acquisition or increase of *control* unless it is satisfied that the approval requirements are met (section 186 of the *Act*). These are that:~~
- (1) ~~the acquirer is a fit and proper *person* to have the *control* over the *firm* that he has or would have if he acquired the *control* in question; and~~
- (2) ~~the interests of *consumers* would not be threatened by the acquirer's *control* or by his acquiring that *control*. [deleted]~~
- 11.7.6 G ~~In deciding whether the approval requirements are met, the FSA must have regard, in relation to the *control* that the acquirer:~~
- (1) ~~has over the *firm*; or~~
- (2) ~~will have over the *firm* if the proposal to which the notification relates is carried out;~~
- ~~to the FSA's duty to ensure that the *firm* will satisfy, and continue to satisfy, the *threshold conditions* (section 186(3) of the *Act*). [deleted]~~
- 11.7.7 G (1) ~~If the FSA proposes to object, it must issue a *warning notice*.~~
- (2) ~~If the FSA decides to proceed with its proposed objection, it must issue a *decision notice*.~~
- (3) ~~If the FSA considers that the approval requirements would be met if a particular step were taken or not taken, the *decision notice* must identify that step (section 186(4) of the *Act*). [deleted]~~

- 11.7.8 G The *FSA* may also object if it has not received sufficient information from either the *controller* or the *firm* to satisfy itself that the approval requirements are met. [deleted]

Warning notices and decision notices

- 11.7.9 G The procedure followed by the *FSA* in relation to the giving of *warning notices* and *decision notices* is set out in *DEPP 2*. [deleted]

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

- 11.7.10 G If the *FSA* receives a valid notification from a *controller* or proposed *controller*, the *FSA* must respond within three *months* (section 183(1) of the *Act*). The response from the *FSA* will be either an approval notice or a *warning notice*. [deleted]

- 11.7.11 G (1) Where the *FSA* becomes aware of a possible breach by the *controller* or proposed *controller* of his obligations under section 178(1) or (2) of the *Act* (Obligation to notify the Authority), it may require the *person* concerned to provide additional information or *documents* (section 188(4) of the *Act*).

- (2) If the *FSA* is satisfied that a breach has occurred, but is not satisfied that the approval requirements are met, the *FSA* may give a *warning notice* to the *controller* or proposed *controller* (section 187(1) and 188(1) of the *Act*).

- (3) Alternatively, the *FSA* may retrospectively approve the change in *control* as if a notification had been received from the *controller* or proposed *controller* (section 187(2) of the *Act*). [deleted]

- 11.7.12 G If the *FSA* does not receive a notification from the *controller* or proposed *controller* and proposes to give a *warning notice*, it must do so within three *months* of the date on which it became aware that the *controller* or proposed *controller* had failed to comply with his duty to notify (section 188(3) of the *Act*). [deleted]

- 11.7.13 G Before giving an approval notice or *warning notice*, the *FSA* must comply with certain requirements as to consultation with competent authorities outside the *United Kingdom* (sections 183(2) and 188(2) of the *Act* and the Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001). The *Financial Groups Directive* Regulations make special provision in relation to (the change in *control* over a *UK* authorised person (within the meaning of section 178(4) of the *Act*) which is a member of a *third country group*). [deleted]

The *FSA*'s right to object to existing controllers

- 11.7.14 G If a *controller* fails to give a notification under section 178 of the *Act* on acquiring or increasing *control*, and the *FSA* is not satisfied that the approval requirements are met, the *FSA* may propose to object to the *controller* by

giving him a *warning notice* (sections 187(1) and 188(1) of the *Act*). [deleted]

11.7.15 G The *FSA* may propose to object to a *controller* by giving him a *warning notice* at any time if it becomes aware of matters as a result of which it is satisfied that:

- (1) the approval requirements are not met with respect to the *controller*; or
- (2) a condition attached to an approval required the *controller* to do (or refrain from doing) a particular thing and that condition has been breached by the *controller* (sections 187(3) and 188(1) of the *Act*).
[deleted]

11.7.16 G If the *FSA* gives a *warning notice* as described in *SUP 11.7.14 G* or *SUP 11.7.15 G*, section 188 of the *Act* sets out various requirements as to timetable, consultation and provision of information. [deleted]

11.7.17 G Following a *warning notice* as described in *SUP 11.7.14 G* or *SUP 11.7.15 G*, the *FSA* may decide to object to the *controller* and give him a *decision notice*. If the *FSA* does so, or if a conditional approval has been contravened, it may impose restrictions on some or all of the *controller's* shares by notice in writing or apply to the court for an order that the *controller* dispose of them (section 189 of the *Act*). [deleted]

11.7.18 G If it appears to the *FSA* that the likely effect of an acquisition of *control* on a *firm*, or on any of its activities, is uncertain, the *FSA* may, in accordance with section 46 of the *Act* (Variation of permission on acquisition of control), vary the *firm's Part IV permission* by:

- (1) imposing a *requirement* (see *SUP 7: Individual requirements*); or
- (2) varying an existing *requirement*.

The *warning notice* and *decision notice* procedure does not apply to action taken under section 46 of the *Act*, but the *FSA* will operate a procedure that is fair in the circumstances. [deleted]

16.4 Annual controllers report

Application

16.4.1 G This section applies to every *firm* except those *firms* excluded from its operation by *SUP* 16.1.1R and *SUP* 16.1.3R.

16.4.2 G This section may be of relevance to a *directive friendly society*:

- (1) if it has 10 members or less;
- (2) if it has a delegate voting system and has 10 delegates or less; or
- (3) if it has 20 members or less and effects or carries out group insurance contracts where one person may exercise one vote on behalf of the members of a group and one vote in their private capacity; or

where a member or delegate, whether alone or ~~with any associate acting in concert~~, is entitled to exercise, or control the exercise of, 10% or more of the total voting power.

16.4.2A G This section may be relevant to *non directive firms*.

16.4.3 G Requirements for notifications of a change in *control* can be found in *SUP* 11 (Controllers and close links).

Purpose

16.4.4 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 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 *threshold conditions* (see *COND* 2.3) ~~and to the protection of consumers~~;
- (2) to implement certain requirements relating to annual reporting of *controllers* which must be imposed on *firms* under the Investment Services Directive, the Banking Consolidation Directive, the *Third Life Directive* and the *Third Non-Life Directive*; and
- (3) to support the FSA's functions under Part XII of the *Act* (Control over authorised persons) (see *SUP* 11 (Controllers and close links)).

Reporting requirement

16.4.5 R (1) A *firm* must submit a report to the *FSA* annually, containing the

- information in (3) or (4) (as applicable).
- (2) A *firm* must submit the report in (1) to the *FSA* within four months of the *firm's accounting reference date*.
- (3) If a *firm* is not aware:
- (a) that it has any *controllers*; or
 - (b) of any changes in the identity of its *controllers* since the submission of its previous report under (1); or
 - (c) of any changes in the percentage of shares or *voting power* in the *firm* held by any *controllers* (alone or ~~with any associate~~ *acting in concert*) since the submission of its previous report;
- then the report in (1) must confirm this.
- (4) Unless (3) applies, the report in (1) must contain a list of all the *controllers* as at the *firm's accounting reference date* of which it is aware and, for each such *controller*, state:
- (a) its name;
 - (b) the percentage of *voting power* in the *firm*, or in the *firm's parent undertaking*, which it is entitled to exercise or control the exercise of, whether alone or ~~with any associate~~ *acting in concert*;
 - (c) the percentage of shares in the *firm*, or in the *firm's parent undertaking*, which it holds, whether alone or ~~with any associate~~ *acting in concert*;
 - (d) if the *controller* is a *body corporate*, its country of incorporation, address and registered number; and
 - (e) if the *controller* is an individual, his date and place of birth.
- (4A) A *firm* that is a *regulated entity* must include in its report to the *FSA* 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* under (4A) if it, or another member of the *third-country banking and investment group*, has already given notice to the *FSA* of the relevant fact.
- (5) In this section, '~~associate~~' 'voting power' and 'shares' have the meanings given in the definition of *controller*.

...

...

Exceptions: friendly societies and building societies

- 16.4.10 R If a *firm* is a *friendly society* or a *building society*, then it is required to submit a report under SUP 16.4.5R only if it is aware that it has a *controller*.
- 16.4.11 R In SUP 16.4.5R and SUP 16.4.10R, a *building society* may regard a *person* as not being a *controller* if that *person* is exempt from the obligation to notify a change in *control* under The Financial Services and Markets Act 2000 (Controllers) (Exemption) (No.2) Order 2001 (SI 2001/3338) (see SUP 11.3.2AG(2)).

Exception: Insurers

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

Annex C

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

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

4 Supervision

4.2C Control over a UK RIE

4.2C.1 G Section 301A(1) of Chapter 1A of Part XVIII of the Act places an obligation on ~~en~~ ~~tr~~ ~~oll~~ ~~ers~~ ~~and~~ ~~pro~~ ~~posed~~ ~~con~~ ~~t~~ ~~r~~ ~~o~~ ~~ll~~ ~~e~~ ~~r~~ ~~s~~ ~~of~~ ~~a~~ ~~person~~ ~~who~~ ~~has~~ ~~dec~~ ~~id~~ ~~e~~ ~~d~~ ~~to~~ ~~ac~~ ~~qu~~ ~~ir~~ ~~e~~ ~~control~~ ~~or~~ ~~ac~~ ~~qu~~ ~~ir~~ ~~e~~ ~~incre~~ ~~as~~ ~~e~~ ~~d~~ ~~control~~ (see section 301C of the Act) of a ~~UK RIEs~~ RIE to notify the FSA (proposed acquirer), ~~of~~ ~~ac~~ ~~qu~~ ~~is~~ ~~it~~ ~~ions~~ ~~of~~ ~~or~~ ~~inc~~ ~~re~~ ~~as~~ ~~e~~ ~~s~~ ~~in~~ ~~con~~ ~~t~~ ~~r~~ ~~o~~ ~~l~~ ~~except~~ ~~in~~ ~~the~~ ~~circ~~ ~~um~~ ~~st~~ ~~an~~ ~~ces~~ ~~des~~ ~~cri~~ ~~bed~~ ~~in~~ ~~section~~ ~~301B~~ ~~of~~ ~~the~~ ~~Act~~. Furthermore, those ~~persons~~ are required to obtain the FSA's approval before becoming a controller or increasing the level of control held (in certain circumstances).

In circumstances where a person is not required to give the above notification, section 301A(2) of chapter 1A of Part XVIII of the Act places an obligation on that person to notify the FSA if he or she nevertheless acquires control or acquires increased control (see section 301C of the Act) of a UK RIE (acquirer), except in the circumstances described in section 301B of the Act.

4.2C.2 G The FSA will approve an acquisition of control if it is satisfied that the acquisition of control by the *person* seeking approval does not pose a threat to the sound and prudent management of any financial market operated by the UK RIE.

4.2C.3 G If an acquirer or a proposed controller or controller acquirer has complied with the obligation to notify, the procedure the FSA will follow if it approves or does not approve of that *person* becoming a controller acquiring control or increasing the level of control held acquiring increased control is set out in ~~section~~ sections 301E and 301F of the Act.

4.2C.4 G If ~~a controller~~ an acquirer or proposed ~~controller~~ acquirer has ~~not complied with the duty~~ failed to comply with an obligation to notify, the procedure the FSA will follow if it approves or does not approve of that *person* becoming a controller acquiring control or increasing the level of control held acquiring increased control is set out in ~~section 301D~~ 301H of the Act.

4.2C.5 G If the FSA becomes aware of matters as a result of which it is satisfied that the criterion set out in REC 4.2C.2G is not met, the procedure it will follow is set out in criterion ~~301D~~ 301I of the Act.

- 4.2C.6 G The *FSA*'s internal arrangements provide for any decisions to refuse to approve a change of control ~~of~~ or object to an existing control to be taken at an appropriately senior level.
- 4.2C.7 G If the *FSA* refuses to approve a change of control or objects to an existing control, the *person* concerned may refer the matter to the *Tribunal* (see *EG* 2.39).
- 4.2C.8 G The powers the *FSA* can exercise in the event that a *person* acquires or continues to exercise control notwithstanding the *FSA*'s refusal to approve the acquisition of control or the *FSA*'s objection to the exercise of control are set out in ~~section 301E~~ sections 301J and 301K of the *Act*.
- 4.2C.9 G The offences for which a *person* who fails to comply with the obligations set out in Chapter 1A of Part XVIII of the *Act* is liable are set out in section ~~301F~~ 301L of the *Act*.

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