

CLOSE LINKS REPORTING INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in the following sections of 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 purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 June 2010.

Amendments to the Handbook

- D. The Threshold Conditions (COND) are amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Close Links Reporting Instrument 2009.

By order of the Board
5 November 2009

Annex A

Amendments to the Threshold Conditions (COND)

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

- 2.3.7 G (1) For the purposes of *threshold condition 3* (Close links) and except in relation to an *incorporated friendly society*, an undertaking is a *parent undertaking* of another *undertaking* (a *subsidiary undertaking*) if any of the following apply to it:

...

- (e) ~~it has a participating interest (as defined in section 421A of the Act (Meaning of “participating interest”)) in the subsidiary undertaking and:~~

(i) ~~actually exercises a dominant influence over it; or~~

(ii) ~~it and the subsidiary undertaking are managed on a unified basis;~~

it has the power to exercise, or actually exercises, dominant influence or control over it, or it and the subsidiary undertaking are managed on a unified basis; or

...

...

- 2.3.8 G ...

- (2) ~~In relation to COND 2.3.7G (1)(e), a ‘participating interest’ means an interest held by an undertaking in the shares of another undertaking which it holds on a long term basis, for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest. A holding of 20% or more of the shares of an undertaking is presumed to be a participating interest unless the contrary is shown. Examples of interests of a temporary nature which do not constitute participating interests for the purpose of this control relationship include market makers’ holdings in a trading book. [deleted]~~
- (3) ~~Section 421A of the Act states that an interest held on behalf of an undertaking is treated as held by it. Thus, if the chain of ownership includes a trust, the FSA will treat the trustees as legal owners when determining whether it considers there to be a close link. The beneficiaries or settlors of a trust (or both) may also come within the scope of these provisions, depending on the terms of the trust.~~

~~However, the FSA will consider each case on its merits. [deleted]~~

...

2.3.11A G Paragraphs 3(2)(e) to (f) of Schedule 6 to the Act reflect legislation initially introduced in the *Post-BCCI Directive*, which defines close links, in part, by reference to participation. Recital 5 of the *Post-BCCI Directive* gives further guidance on what is meant by ‘participation’ for the purposes of the directive. It states that the sole fact of having acquired a significant proportion of a company’s capital does not constitute participation for the purposes of the directive if that holding has been acquired solely as a temporary investment which does not make it possible to exercise influence over the structure or financial policy of the undertaking.

...

COND 2 Annex 1G is deleted in its entirety. The deleted text is not shown struck through.

2 Annex 1G [deleted]

Annex B

Amendments to the Supervision manual (SUP)

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

11.9 Changes in close links

Requirement to notify changes in close links

- 11.9.1 R (1) *A firm* must notify the FSA that it has become or ceased to be *closely linked* with any *person*. The notification must be made by completing the Close Links Notification Form (see SUP 11.9.3AG) and must include the information set out in SUP 16.5.4R(4).
- (2) If a group includes more than one firm, a single close links notification may be made by completing the Close Links Notification Form and so satisfy the notification requirement for all firms in the group. Nevertheless, the requirement to notify, and the responsibility for notifying, remains with each firm in the group.
- 11.9.2 G *Guidance* on what constitutes a *close link* is provided in COND 2.3.
- 11.9.2A G A firm may elect not to include the following close links in the notification submitted under SUP 11.9.1R, SUP 11.9.5R or SUP 16.5:
- (1) shares held in its capacity as custodian provided it can only exercise any voting rights attached to such shares under instructions given in writing or by electronic means;
- (2) shares held in its capacity as collateral taker under a collateral transaction which involves the outright transfer of securities provided it does not declare any intention of exercising (and does not exercise) the voting rights attaching to such shares.

...

Form of notification

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

Timing of notification requirement

- 11.9.4 R The *firm* must make a notification to the FSA under SUP 11.9.1R:
- (1) as soon as reasonably practicable and no later than one *month* after it becomes aware that it has become or ceased to be closely linked with any *person*; or

- (2) where a *firm* has elected to report on a *monthly* basis, within fifteen *business days* of the end of each *month* ~~and~~ by completing the Close Links Notification Form, including the information set out in SUP 16.5.4R(4) for that *month* and must submit the *group* organisation chart on a quarterly basis unless there have been no changes since the submission of the previous organisation chart to the FSA, in which case the *group* organisation chart is not required:
- (a) ~~including the information set out in SUP 16.5.4R(4) for that *month*; and~~
 - (b) ~~if there is no *person* required to be included in the notification for a particular *month*, confirming this fact in the notification.~~

...

16.5 Annual Close Links Reports

Application

- 16.5.1 G This section applies to every *firm* listed in SUP 11.1.1R(1) to SUP 11.1.1R(6), except those *firms* excluded from its operation by SUP 16.1.1R and SUP 16.1.3R or which have elected to report on a monthly basis in accordance with SUP 11.9.5R.

...

- 16.5.4 R (1) A *firm* must submit a report to the FSA annually by completing the Close Links Notification Form (see SUP 11.9.3AG) and must include, containing the information in (3) or (4) (as applicable) and (5).

...

- (5) The *firm* must also submit a *group* organisation chart.

- 16.5.5 G ~~The information required by SUP 16.5.4R(4) may be provided in the form of a *group* organisation chart. [deleted]~~

...

Schedule 2 Notification requirements

...

Sch 2.2G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>SUP</i> 11.9.1R	<i>Close links.</i>	<p>(a) the name of the <i>person</i>;</p> <p>(b) the nature of the <i>close links</i>;</p> <p>(c) if the <i>close link</i> is with a <i>body corporate</i>, its country of incorporation, address and registered number; and</p> <p>(d) if the <i>close link</i> is with an individual, his date and place of birth; <u>and</u></p> <p>(e) <u>group organisation chart (required only quarterly if the <i>firm</i> has elected to report monthly).</u></p>	The <i>firm</i> becoming aware that it has become or ceased to be <i>closely linked</i> with any <i>person</i> .	As soon as reasonably practicable and no later than one <i>month</i> after the <i>firm</i> becomes aware that it has become or ceased to be <i>closely linked</i> or if the <i>firm</i> has elected to report <i>monthly</i> , within 15 <i>business days</i> of the end of each <i>month</i> (see <i>SUP</i> 11.9.4R).
...				
<i>SUP</i> 16.5.4R	Reporting - annual <i>close links</i> report - every <i>firm</i> except: (1) an <i>ICVC</i> ; (2) an <i>incoming EEA firm</i> ; (3) an <i>incoming Treaty firm</i> ; (4) a <i>non-</i>	<p>If the <i>firm</i> is not aware:</p> <p>(a) that it has <i>close links</i>; or</p> <p>(b) of any material changes to the details since the last report;</p>	<p>Annually from the <i>accounting reference date</i>.</p> <p>If a <i>firm</i> is an <i>unincorporated friendly society</i>, then it is only required to submit a report if it is aware that it has</p>	Four months.

	<p><i>directive friendly society;</i> (5) a <i>partnership</i>; (6) a <i>sole trader</i>; (7) a <i>service company</i>; (8) a <i>UCITS qualifier</i>.</p>	<p>then confirmation of this.</p> <p>If the above does not apply, the report must contain a list of all <i>persons</i> with whom the <i>firm</i> has <i>close links</i> as at the firm's <u><i>firm's</i></u> <u><i>accounting reference date</i></u> of which it is aware, and for each such <i>person</i> state:</p> <p>(a) its name;</p> <p>(b) the nature of the <i>close links</i>;</p> <p>(c) if the close link <u><i>close link</i></u> is with a <i>body corporate</i>, its country of incorporation, address and registered number; and</p> <p>(d) if the <i>close link</i> is with an individual, his date and place of birth; and</p> <p>The information may be provided in the form of</p> <p>(e) a group organisation chart.</p>	<p><i>close links.</i></p>	
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