Appendix 1

GENERAL RULEBOOK (GEN)

*In this attachment underlining indicates new text and striking through indicates deleted text.

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8A. MODIFIED TRANSFER SCHEMES

Guidance

1. Part 7 of FSMR governs Transfer Schemes. The Regulator may modify any provision of Part 7 of FSMR by Rules for the purpose of furthering one or more of its objectives, pursuant to section 91 of FSMR. This Chapter sets out Rules to modify the application of Part 7 of FSMR for those types of Transfer Schemes to which this Chapter applies.

2. The effect of the Rules in this Chapter, when read together with Part 7 of FSMR, is that:

   a. an Insurance Business Transfer Scheme cannot be effected as a Modified Transfer Scheme;

   b. a Transfer Scheme governed by Chapter 18 of FUNDS must continue to comply with the relevant provisions in FUNDS; and

   c. all other Transfer Schemes may proceed without a Court order sanctioning that Transfer Scheme as a Modified Transfer Scheme, if the requirements set out in the Rules in this Chapter are met.

3. The Rules in this Chapter do not require the person concerned or the transferee to pursue a Modified Transfer Scheme. An application for a Court order pursuant to Part 7 of FSMR remains an option. There may be circumstances where a transfer of business satisfies the requirements of a Modified Transfer Scheme but the person concerned considers it appropriate to use the Court approval process. For example, this may be appropriate when the Transfer Scheme is complex or potentially contentious, when the transfer involves a large customer base or when additional legal certainty may be beneficial.

8A.1 Application

8A.1.1 (1) The Rules in this Chapter are made pursuant to section 91 of FSMR and Part 7 of FSMR is to be read as modified in relation to Modified Transfer Schemes as set out in section 8A.3 in this Chapter.

(2) This Chapter does not apply to:

(a) an Insurance Business Transfer Scheme; and

(b) a Transfer Scheme governed by Chapter 18 of FUNDS.

8A.2 Meaning of certain terms

8A.2.1 In this Chapter, the terms "person concerned" and "transferee" have the meaning set out in section 85(2) of FSMR.

8A.2.2 For the purposes of this Chapter:

(a) A "Banking Business Transfer Scheme" is a Transfer Scheme where the whole or part of the business to be transferred relates to an Authorised Person's business of Accepting Deposits; and

(b) An "Insurance Business Transfer Scheme" is a Transfer Scheme where the whole or part of the business to be transferred relates to an Authorised Person's Insurance Business, except where either:

i) the business to be transferred under the scheme is the whole of the business of the person concerned;

ii) all the policyholders are Controllers of the firm or of firms within the same Group as the firm which is the transferee; and

iii) all the policyholders who will be affected by the transfer have consented to it in writing;

or

i) the business of the person concerned consists solely of effecting or carrying out of contracts of reinsurance; and

ii) all the policyholders who will be affected by the transfer have consented to it in writing.

and a confirmation of no-objection has been obtained from the Regulator in relation to the proposed transfer.

Guidance

1. For clarity, an Insurance Business Transfer Scheme generally requires Court approval, but two types of insurance business transfers are excluded from the definition of Insurance Business Transfer Scheme. This means that, if the proposed Transfer Scheme falls within one of these two exemptions, then the transfer may proceed as a Modified Transfer Scheme, without requiring a Court order, if the requirements set out in the Rules in this Chapter are met. Where relevant for reinsurers, obtaining consent from policyholders refers to obtaining consent from the cedant insurers.

8A.3 Modified Transfer Schemes

8A.3.1 A Transfer Scheme may be effected as a Modified Transfer Scheme without requiring a Court order pursuant to section 86 of FSMR where the requirements set out in Rules 8A.3.2 to 8A.3.3 have been satisfied.

Requirement for advance notice to the Regulator

8A.3.2 (1) The person concerned or transferee must provide the Regulator with advance written notice of the proposed Transfer Scheme.

(2) The written notice should include, at a minimum:

(a) the details of the proposed transfer;

(b) an assessment of the transferee's position to receive the transferring business;

(c) confirmation that the scheme meets the requirements for a Modified Transfer Scheme; and

(d) confirmation of how the person concerned or transferee has satisfied or will satisfy the requirements set out at Rule 8A.3.3.

(3) The Regulator may request any further information it deems necessary in connection with the proposed transfer.

(4) If the Regulator is not satisfied with any aspects related to a proposed transfer following a notification in accordance with Rule 8A.3.2(1) to (3), the Regulator may:

(5) For a Banking Business Transfer Scheme and any Transfer Scheme that falls under the two Insurance Business Transfer Scheme exclusions, the person concerned or transferee may only proceed with the proposed Modified Transfer Scheme if it has received no-objection from the Regulator.

(6) Where the Regulator proposes to exercise its powers pursuant to Rule 8A.3.2(4), the Regulator must, as soon as practicable and in any event within 60 days of the receipt of the notification and all required information about the proposed transfer, provide to the person concerned:

(a) a written notice stating:

(i) the Regulator's reasons for objecting to, or imposing conditions on, the proposed transfer; and

(ii) any conditions subject to which the relevant person may proceed with the proposed transfer; and

(b) an opportunity for the relevant person to make representations within 14 days of the receipt of such notice in (a) or such other longer period as agreed to by the Regulator.

(7) The Regulator must, as soon as practicable after receiving representations or, if no representations are made, after the expiry of the period for making representations referred to in (6)(b), issue a final notice stating either that:

(a) the proposed transfer can proceed as a Modified Transfer Scheme, subject to conditions specified in the notice; or

(b) the proposed objections and any conditions are withdrawn and the proposed transfer can proceed as a Modified Transfer Scheme.

(8) If the Regulator decides to exercise its power under [8A.3.2(7)], the person concerned or transferee may refer the matter to the Appeals Panel for review.

Guidance

1. When notifying the Regulator of the proposed transfer, it is expected that the details of the proposed transfer would include at a minimum the following information: an outline of the type and estimated size of the transferring business, the proposed transferor and transferee(s), the proposed timelines, the purpose of the transfer, details of any related transactions or wider restructuring plans, and any other relevant information regarding the proposed transfer.

2. When considering whether to exercise its powers under Rule 8A.3.2(4), the Regulator may have regard to a range of factors including, but not limited to, whether:

   a. the Transfer Scheme is complex or potentially contentious;

   b. the person concerned has a large customer base;

   c. the transferee will have the necessary authorisation to carry on the business that is being transferred;

   d. the transferee has sufficient financial resources to carry on the business;

   e. requiring the transfer to proceed as a Transfer Scheme pursuant to Part 7 of FSMR, rather than as a Modified Transfer Scheme, is necessary for the purpose of furthering one or more of the Regulator's objectives;

f. any other regulator has consented or objected to the proposed transfer;

g. implementation of the proposed transfer will result in a contravention of any Regulation or Rule; and

h. in all the circumstances, it is more appropriate and in the overall interests of clients affected by the proposed transfer for the person concerned or transferee to seek the Court's approval to Part 7 of FSMR.

Requirements for impact assessment and notice

8A.3.3 In relation to the proposed transfer, the person concerned or the transferee must:

(a) satisfy itself that the proposed transfer will not materially prejudice the interests of affected clients;

(b) give public notice of the proposed transfer in a timely manner in advance;

(c) give prior written notice to all clients affected by the proposed transfer, where such notice or notices must, at a minimum, provide:

i) adequate information on the proposed transfer and the likely impact of the transfer on each affected client; and

ii) the options available to each affected client.

Guidance

1. The person concerned should satisfy itself that the implementation of the proposed transfer will not lead to contravention of a Regulation or a Rule. Additionally, the person concerned and the transferee should satisfy themselves that the transfer will not result in any material prejudice to the interests of affected clients or other affected parties. Where required, the Regulator would expect that appropriate mitigations are in place to ensure that clients are not adversely affected by changes in terms or services

2. Notice to affected clients should be drafted in clear and easily understood wording. It should provide an overview of the potential impact of the transfer on them. Information to affected clients should include any anticipated changes to products, services, or terms and conditions resulting from the transfer. Where the changes are necessary, such changes should be clearly and prominently notified to clients.

3. Notice to affected clients should allow affected clients sufficient time to ask for further information, raise any objections, and where relevant allow opportunity for

affected clients to transfer or terminate their business on terms that are not detrimental to the client. This would include receiving funds equivalent to their realisable entitlements or benefits at the time of the transfer, e.g. bank balances plus any interest or gains owing up to that point in time.

4. At a minimum, public notice should be put into the public domain via appropriate channels best suited to bringing the transfer scheme to the attention of any persons who may be affected by it, and also published on the transferor's website.

5. The onus is on the person concerned or the transferee to ensure that a transfer of business under a Modified Transfer Scheme is legally effective. Undertaking a Modified Transfer Scheme may mean that it is not necessary to apply for a Court order to give effect to the transfer, but it does not of itself give legal effect to the transfer.

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