

Supervision

# **Chapter 18**

## **Transfers of business**

18.1 Application

- 18.1.1 G This chapter provides *guidance* in relation to business transfers.
- (1) ■ SUP 18.2 applies to any *firm* or to any *underwriting member* or any former *member* of Lloyd's proposing to transfer the whole or part of its business by an *insurance business transfer scheme* or to accept such a transfer. Some of the *guidance* in this chapter, for example, at ■ SUP 18.2.31 G to ■ SUP 18.2.41 G also applies to the *independent expert* making the *scheme report*.
  - (2) ■ SUP 18.3 applies to any *firm* proposing to accept certain transfers of *insurance business* taking place outside the *United Kingdom*.
  - (3) ■ SUP 18.4 applies to any *friendly societies* proposing to amalgamate under section 85 of the Friendly Societies Act 1992, to any *friendly society* proposing to transfer engagements under section 86 of that Act to another body and to any body (whether or not it is a *friendly society*) proposing to accept such a transfer. ■ SUP 18.4 also provides *guidance* to those wishing to make representations to the appropriate authority about an application for confirmation of an amalgamation or transfer.

Interpretation

- 18.1.1A G The 'appropriate authority' in this chapter means the regulator within the meaning of section 119 of the Friendly Societies Act 1992.
- 18.1.1B G References to the 'regulator' and 'regulators' in this chapter means the *FCA* and/or the *PRA*.
- 18.1.1C G References to the 'Memorandum of Understanding' in this chapter is to the memorandum of understanding in force between the regulators under section 3E of the *Act*.

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Introduction

18.1.3 G *Insurance business transfers* are subject to Part VII of the *Act* and must be approved by the court under section 111. The following statutory pieces of legislation also apply:

- (1) The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625), as amended by the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) (Amendment) Regulations 2008 (SI 2008/1467) and the Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008 (SI 2008/1468);
- (2) the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001(SI 2001/3626), as amended by The Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) (Amendment) Order (2008/1725); and
- (3) the Reinsurance Directive Regulations 2007 (SI 2007/3253) and the Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007 (SI 2007/3255),

These regulations set out minimum requirements for publicising schemes, notifying certain interested parties directly (subject to the discretion of the court), and giving information to anyone who requests it.

18.1.4 G An *insurance business transfer scheme* is defined in section 105 of the Act and the definition has been extended to transfers from *underwriting members* and former *members* of Lloyd's.

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The business transferred may include liabilities and potential liabilities on expired *policies*, liabilities on current *policies* and liabilities on contracts to be written in the period until the transfer takes effect. The parties to schemes approved under foreign legislation or involving novations of reinsurance or a captive *insurer* can apply to the court for an order sanctioning the scheme.

18.1.5 G The regulators are likely to consider a novation or a number of novations as amounting to an *insurance business transfer* only if their number or value were such that the novation was to be regarded as a transfer of part of the business. A novation is an agreement between the *policyholder* and two *insurers* whereby a contract with one *insurer* is replaced by a contract with the other. If an *insurer* agrees to meet the liabilities (this may include undertaking the administration of the *policies*) of another *insurer* by means of a reinsurance contract, including Lloyd's *reinsurance to close*, this would not constitute an *insurance business transfer* because the contractual liability remains with the original *insurer*; nor would an arrangement whereby an *insurer* offers to renew the *policies* of another *insurer* on their expiry date.

18.1.6 G Under section 112 of the Act, the court has wide discretion to transfer property and liabilities to the transferee and to make orders in relation to incidental, consequential and supplementary matters.

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18.1.7 G **Amalgamations of *friendly societies* and transfers of engagements from *friendly societies* to other bodies (whether or not *friendly societies*) are governed by part VIII of the Friendly Societies Act 1992 and Schedule 15 to that Act applies.**

18.1.8 G **Legislation in respect of other transactions, for example, cross-border**



18.2 Insurance business transfers

Purpose

18.2.1 G Transfers may enable firms to manage their affairs more effectively. However they represent an interference in the contracts between a firm and its customers, without the consent of each customer, and may also affect the rights of third parties. An important protection is the requirement for the consent of the court.

The regulators

18.2.1A G (1) Part VII of the Act prescribes certain statutory functions in relation to insurance business transfer schemes for both the PRA and the FCA. In accordance with the Act...

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- 18.2.1B G **In exercising its functions under the *Act*, each regulator will, so far as is reasonably possible, act in a way which is compatible with, and most appropriate for advancing, its *statutory objectives* as set out in the *Act* and will have regard to the regulatory principles in section 3B of the *Act*.**
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- 18.2.3 G **[deleted]**
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- 18.2.5 G **Transfers may have both positive and negative effects on individual *consumers*. A key concern in this regard for each regulator will be to be satisfy itself that each *consumer* has adequate information and reasonable time within which to determine whether or not he is adversely affected and, if adversely affected, whether to make representations to the court.**
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- 18.2.9 G **[deleted]**
- 18.2.10 G **[deleted]**
- 18.2.11 G **[deleted]**
- 18.2.12 G **Procedure: initial steps**  
 .....  
**When an *insurance business transfer scheme* is being considered, the scheme promoters should discuss the scheme with the *appropriate regulator* as soon as reasonably practical, to enable the regulators to consider what issues are likely to arise, and to enable a practical timetable for the scheme to be established.**
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**bodies in this process and demonstrate that it will meet the requirements of its regulators following the transfer.**

Form of scheme report

18.2.31 **G** Under section 109 of the *Act*, a **scheme report** must accompany an application to the court to approve an **insurance business transfer scheme**. This report must be made in a form approved by the **appropriate regulator**. The **appropriate regulator** would generally expect a scheme report to contain at least the information specified in **SUP 18.2.33 G** before giving its approval.

18.2.31A **G** When the **appropriate regulator** has approved the form of a **scheme report**, the scheme promoter may expect to receive written confirmation to that effect from that regulator.

18.2.32 **G** There may be matters relating to the scheme or the parties to the transfer that the regulators wish to draw to the attention of the **independent expert**. The regulators may also wish the report to address particular issues. The **independent expert** should therefore contact the regulators at an early stage to establish whether there are such matters or issues. The **independent expert** should form his own opinion on such issues, which may differ from the opinion of the regulators.

18.2.33 **G** The **scheme report** should comply with the applicable rules on expert evidence and contain the following information:

- (1) who appointed the **independent expert** and who is bearing the costs of that appointment;
- (2) confirmation that the **independent expert** has been approved or

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- (4) include his views on:
- (a) the effect of the scheme on the security of *policyholders'* contractual rights, including the likelihood and potential effects of the insolvency of the *insurer*;
  - (b) the likely effects of the scheme on matters such as investment management, new business strategy, administration, expense levels and valuation bases in so far as they may affect:
    - (i) the security of *policyholders'* contractual rights;
    - (ii) levels of service provided to *policyholders*; or
    - (iii) for *long-term insurance business*, the reasonable expectations of *policyholders*; and
  - (c) the cost and tax effects of the scheme, in so far as they may affect the security of *policyholders'* contractual rights, or for *long-term insurance business*, their reasonable expectations.

18.2.37 G The *independent expert* is not expected to comment on the likely effects on new *policyholders*, that is, those whose contracts are entered into after the effective date of the transfer.

18.2.38 G For any mutual *company* involved in the scheme, the report should:

- (1) describe the effect of the scheme on the proprietary rights of members of the *company*, including the significance of any loss or dilution of the rights of those members to secure or prevent further changes which could affect their entitlements as *policyholders*;
- (2) state whether, and to what extent, members will receive compensation under the scheme for any diminution of proprietary rights; and
- (3) comment on the appropriateness of any compensation, paying particular attention to any differences in treatment between members with voting rights and those without.

18.2.39 G For a scheme involving *long-term insurance business*, the report should:

- (1) describe the effect of the scheme on the nature and value of any rights of *policyholders* to participate in profits;
- (2) if any such rights will be diluted by the scheme, how any compensation offered to *policyholders* as a group (such as the injection of funds, allocation of shares, or cash payments) compares with the value of that dilution, and whether the extent and method of its proposed division is equitable as between different classes and generations of *policyholders*;
- (3) describe the likely effect of the scheme on the approach used to determine:
  - (a) the amounts of any non-guaranteed benefits such as bonuses and *surrender values*; and
  - (b) the levels of any discretionary charges;

- (4) describe what safeguards are provided by the scheme against a subsequent change of approach to these matters that could act to the detriment of existing *policyholders* of either *firm*;
- (5) include the *independent expert's* overall assessment of the likely effects of the scheme on the reasonable expectations of *long-term insurance businesspolicyholders*;
- (6) state whether the *independent expert* is satisfied that for each *firm* the scheme is equitable to all classes and generations of its *policyholders*; and
- (7) state whether, in the *independent expert's* opinion, for each relevant *firm* the scheme has sufficient safeguards (such as principles of financial management or certification by a *with-profits actuary* or *actuarial function* holder) to ensure that the scheme operates as presented.

18.2.40 G Where the transfer forms part of a wider chain of events or corporate restructuring, it may not be appropriate to consider the transfer in isolation and the *independent expert* should seek sufficient explanations on corporate plans to enable him to understand the wider picture. Likewise he will need information on the operational plans of the transferee and, if only part of the business of the transferor is transferred, of the transferor. These will need to have sufficient detail to allow him to understand in broad terms how the business will be run.

18.2.41 G A transfer may provide for benefits to be reduced for some or all of the *policies* being transferred. This might happen if the transferor is in financial difficulties. If there is such a proposal, the *independent expert* should report on what reductions he considers ought to be made, unless either:

- (1) the information required is not available and will not become available in time for his report, for instance it might depend on future events; or
- (2) otherwise, he is unable to report on this aspect in the time available.

Under such circumstances, the transfer might be urgent and it might be appropriate for the reduction in benefits to take place after the event, by means of an order under section 112 of the *Act*. Each regulator would wish to consider any such reduction against its *statutory objectives* and section 113 of the *Act* allows the court, on the application of either regulator, to appoint an independent *actuary* to report on any such post-transfer reduction in benefits.

#### Notice provisions

18.2.42 G Under the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) Regulations 2001 (SI 2001/3625), unless the court directs otherwise, notice of the application must be sent to all *policyholders* of the parties and *reinsurers* (or a person acting on its behalf) any of whose contracts of *reinsurance* are proposed to be transferred as part of the *insurance business transfer scheme*.



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affect him. This objective will be most nearly achieved if the summary is clear and concise while containing sufficient detail for the purpose. A lengthy summary or one that was hard to understand would not be appropriate. Regulations require the *scheme report*, the notice and the statement to be made available to anyone requesting them. The internet can be used for this purpose if it is suitable for the *person* making the request.

18.2.49 G Where the transferee is a *friendly society*, the notice should include information about the meeting at which a special resolution in accordance with paragraph 7 of Schedule 12 to the Friendly Societies Act 1992 is to be voted on, including the date of the meeting, how notice of the meeting is to be given to members and the terms of the special resolution. After the meeting the *friendly society* should inform the *appropriate regulator* whether the special resolution has been passed. The court will also need to be informed, so one way of informing the *appropriate regulator* may be to include it in the affidavit to the court.

18.2.50 G The regulators should be given the opportunity to comment on the statement referred to in ■ SUP 18.2.48 G before it is sent, unless the promoters

18.2.51 G



- (8) the opportunity given to *policyholders* and other persons affected by the scheme to consider the scheme, that is whether they have been properly notified, whether they have had adequate information and whether they have had adequate time to consider that information;
- (9) the opinion of the *independent expert*;
- (10) for a transfer that involves *underwriting members* or *former members* of Lloyd's as transferor or transferee, the effect on the *Society*;
- (11) the views of other *regulatory bodies* consulted in connection with the proposed transfer; and
- (12) any views expressed by *policyholders*, *reinsurers* or any other affected parties.

18.2.52 G The *scheme report* will be an important factor in the view each of the regulators forms on a scheme. Considerable reliance will be placed on the opinions of the *independent expert* and the reasons for them. However each regulator will form its own view taking into account other relevant information and having regard to its *statutory objectives*.

18.2.53 G The regulators are likely to object to a scheme if they conclude that it is unfair to a class of *policyholders*, unless the *policyholders* of that class have approved the scheme on the basis of information the regulators consider to be adequate, clear and accurate.

18.2.53A G If at any time the regulators, or either of them, conclude that *policyholders* and/or, as appropriate, other relevant affected *persons* have not had adequate information and/or sufficient time to consider information, they will seek to resolve such issues with the scheme promoters. This may require further notification. If either regulator remains unsatisfied that such *policyholders* and/or other persons have received adequate information and sufficient time to consider it they are likely to object to a transfer.

18.2.54 G Either regulator may exercise its other powers under the *Act*, if it considers this a more effective method of advancing its *statutory objectives*.

18.2.55 G Neither regulator is required under its *statutory objectives* to object to a scheme merely because some other scheme might have been in the better interests of *policyholders*, if the scheme itself is not adverse to their interests. However there may be circumstances where either regulator might require a *firm* to consider or to implement an alternative scheme.

18.2.56 G Where a transfer involves *underwriting members* or *former members* of Lloyd's as transferor or transferee, the *appropriate regulator* will consult the *Society*. Where the business of a *syndicate* is being transferred, the transfer involves all *members* participating in the relevant *syndicate years*.

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of the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001 (SI 2001/3626), as amended by the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) (Amendment) Order 2008 (SI 2008/1725;

- (5) any witness statements or other evidence which the parties to the proposed transfer intend to submit to the court for the directions hearing;
- (6) the draft order.

18.2.57F G Matters included at ■ SUP 18.2.57EG (5) should include sufficient information to enable:

- (1) the *appropriate regulator* to decide which other non-UK regulators must be consulted. This information should be provided to the *appropriate regulator* as soon as it is available;
- (2) the *appropriate regulator* to decide whether to approve the notices at ■ SUP 18.2.57EG (3); and
- (3) each regulator to form an opinion on any matters arising in connection with press advertising and notifications, including in relation to any waivers the parties to the proposed transfer intend to seek from the court under article 4 of those regulations.

18.2.57G G A copy of any order made at the directions hearing should be provided by the applicant to the *appropriate regulator* as soon as it is available.

18.2.57H G In relation to the matters at ■ SUP 18.2.57A G to ■ SUP 18.2.57C G and to facilitate the provision to the court of a second or final report in advance of the final hearing, near-final versions of relevant documents will need to be made available to each of the regulators as soon as practicable. Scheme promoters should be aware that where such documents are produced less than six weeks before the date set for that hearing, the regulators will be less likely to be in a position to complete their assessment in advance of the hearing. Final versions of any such documents should be provided as soon as they are available.

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18.2.58A G Relevant documents in ■ SUP 18.2.57H G will usually include:

- (1) any witness statements or other evidence which the parties to the proposed transfer intend to submit to the court for the final hearing;
- (2) the notice or notices published and sent in accordance with the order of the court at ■ SUP 18.2.57G G;
- (3) proof of publication of the notice or notices at (2);
- (4) any final and/or additional reports of the *independent expert*;

(5) any objections or other representations received from *policyholders* and/or other affected persons together with any responses to any such objections or representations;

(6) the draft final order.

18.2.59  G [deleted]

18.2.59A  G Provided that any necessary consents have been obtained in respect of confidential information, where either regulator has made a report it will give a copy of its report to the court and will give a copy of its report as filed with the court to each of the parties to the proposed transfer as soon as practicable after such filing.

18.2.59B  G Provided that any necessary consents have been obtained in respect of confidential information, the parties to the proposed transfer should give a copy of -320(that)-r1a-320(of11t)-320(b40.91BT0.1961 0 0(b40.91BT0.1961K0(38)9m/F1 100 Tf-

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national laws of the relevant *state of the commitment* or the *state of the risk*.

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Under section 114A of the *Act* the court may direct that notice of a transfer be published by the transferee in any *EEA State* which is the *state of the commitment* or the *state of the risk* as regards any *policy* included in the transfer which evidences a contract of *reinsurance*.



18.3 Insurance business transfers outside the United Kingdom

Purpose

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Under section 115 of the *Act*, the *appropriate regulator* has the power to give a certificate confirming that a *firm* possesses any necessary margin of solvency.

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**If the effect of the transfer may have a material adverse effect on the transferee or the security of *policyholders*, the *appropriate regulator* will consider whether it is appropriate to exercise its powers under the *Act* to achieve its *statutory objectives*.**

## 18.4 Friendly Society transfers and amalgamations

### Purpose

- 18.4.1 G It is for the committee of management of a *friendly society* to decide whether to recommend an amalgamation or a transfer of engagements to the society's members. This section provides some *guidance* on the procedures to be followed and the information to be provided to a friendly society's members so that they are appropriately informed before they exercise their right to vote on the proposals.

### General considerations

- 18.4.1A G In general, although the legislation governing transfers of engagements involves *friendly societies* is the Friendly Societies Act 1992, similar issues arise in these transfers as in *insurance business transfers* under Part VII of the *Act* and so the regulators would expect *firms* to be subject to a similar process followed under the *Act*. Accordingly, *firms* should usually first discuss the procedural aspects for dealing with *friendly society* transfers and amalgamations with the *PRA*. The *PRA* will consult the *FCA* as required by the Friendly Societies Act 1992, or as may otherwise appear to be appropriate.
- 18.4.2 G *Friendly societies* are encouraged to discuss a proposed transfer or amalgamation with the appropriate authority, at an early stage to help ensure that a workable timetable is developed. This is particularly important where there are notification requirements for supervisory authorities in *EEA States* other than the *United Kingdom*, or for an amalgamation where additional procedures are required.
- 18.4.3 G The regulators will want to satisfy themselves that after an amalgamation or a transfer the business will be prudently managed and continue to comply with all applicable requirements.
- 18.4.4 G For a transfer to another *friendly society*, if the conditions of 87(1) and 87(2) of the Friendly Societies Act 1992 are met a report is required from the *appropriate actuary* of the transferee to confirm that it will meet the necessary margin of solvency. Where the conditions of 87(1) and 87(3) are met the appropriate authority may require a report from the *appropriate actuary* of the transferee to confirm that it will have an excess of assets over liabilities.



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18.4.5  **For a transfer of *long-term insurance business***

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18.4.16 G The information should state whether any of the participants has any significant future capital commitments. The appropriate authority will require it to state that the transfer of engagements or amalgamation will not conflict with any contractual commitment by a society, any *subsidiary* or any body jointly controlled by it and others.

18.4.17 G Brief details should be given of the date of the last actuarial valuation and the position revealed (surplus/deficit, necessary margin of solvency and free assets) for each participant.

18.4.18 G The appropriate authority may require confirmation from the auditors of either *friendly society* involved in the transfer or amalgamation about the reasonableness of any part of the information in the statement. For instance such confirmation would normally be required if the financial information relates to a date more than six months previously.

18.4.19 G The statement is required to include particulars of:  
(1) any interest of the members of the committee of management in the amalgamation or transfer; and  
(2) any compensation or other consideration proposed to be paid to committee members or other *officers* of the society and to the *officers* of every other society or *person* participating in the amalgamation or transfer.

Under section 92 of the Friendly Societies Act 1992, any compensation must be approved by a special resolution, separate from any resolution approving other terms of the amalgamation or transfer. This enables members to vote on this as a separate issue.

18.4.20 G Under schedule 15 to the Friendly Societies Act 1992, the appropriate authority may require the statement to include any other matter. Under this provision, inclusion of the terms on which the amalgamation or the transfer of engagements is to be made will usually be required.

18.4.21 G The statement should be clearly separate from other information sent to members. It has to be approved by the appropriate authority and if it is not in a self-contained document, the approved element should appear in a separate section.

18.4.22 G ■ SUP 18 Annex 1 provides an example of the information for members required by Schedule 15.

Confirmation procedures and criteria

18.4.23 G Under the Friendly Societies Act 1992:  
(1) when the members of a transferor society have approved the transfer of its engagements by passing a special resolution and the transferee

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(b) for a transfer, it is in the interests of the members of each *friendly society* participating in it (see

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of each of the points made and the numbers of *persons* making each point) and a society's responses will be made available to those participating in the hearing. This is intended to inform those making oral representations of the points already being considered by the appropriate authority.

18.4.31  G The regulators expect that any documents referred to in a society's comments will be made available by the society for inspection at its registered office and, if reasonably possible, at the venue of the hearing on the date of the hearing. However if a society applies to put documents which it considers to be sensitive to the regulator(s) in confidence, the regulators will balance any disadvantage this might cause interested parties in making representations against the commercial damage that publication of the documents might cause, and the appropriate authority may permit the documents or sensitive parts of them not to be available for inspection.

Confirmation hearing

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**statement of the voting on the resolution, and any other matters which they wish to introduce at that stage;**

- (4) the other participants will be invited to speak to their representations. The appropriate authority expects to call them in order of a list arranged, so far as possible, by subject matter;**
- (5) the society representatives will be invited to reply to, or comment on, the points made by the other participants; and**
- (6) the other participants will be invited to comment on the society replies.**

18.4.36 G **The above procedure may be varied according to the circumstances at the hearing, and is intended only as a guide. The hearing may be adjourned if**

18.4.37 G

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Friendly Society transfer or amalgamation (Information requirements related to Schedule 15 Friendly Societies Act 1992) (This belongs to SUP 18.4.22G)

Transfer/Amalgamation [with/without] [with/without] B]		
<b>Proposed effective date:</b>		
<b>Competition</b>		
<b>(a) Balance Sheet as at 31 December 20-</b>	<b>Society A</b>	<b>Society B</b>
<b>ASSETS</b>		
<b>Land and buildings (4)</b>		

- (7) **Benefit Funds [Technical Provisions] comprise:(include statement of any differences in accounting policies and where material any estimated financial effects)**
- (8) **Reserve Funds [Reserves] comprise:**
- (9) **The membership at [ ] and premium income received during [ ] for each [participant] were:**
- (10) **Brief summary of the financial position of each [participant] as shown in the last actuarial investigation:**
- (11) **Summary of independent actuary's report under section 88 of the Friendly Societies Act 1992:**
- (12) **The interests of committee members of the [participants] in the transfer [amalgamation] are:**
- (13) **Proposed compensation to be paid to committee members and[/or] to other officers is:**
- (14) **The terms of the transfer[amalgamation] are:**