

**1991 No. 443**

**FINANCIAL SERVICES**

**INSOLVENCY**

**Financial Markets and Insolvency Regulations  
(Northern Ireland) 1991**

*Made . . . . . 1st October 1991*

*Coming into operation . . . . . 1st October 1991*

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The Department of Economic Development, in exercise of the powers conferred on it by Articles 80(4) and (5), 81(4) and (5), 83(5) and (7), 95(4) and (5), 96(2) to (4), 106(1) and (3) and 107(1) of the Companies (No. 2) (Northern Ireland) Order 1990(a) and of every other power enabling it in that behalf, having consulted the Treasury and the Bank of England in accordance with Articles 95(6) and 96(5) of that Order, hereby makes the following Regulations:

## PART I

## GENERAL

*Citation and commencement*

1. These Regulations may be cited as the Financial Markets and Insolvency Regulations (Northern Ireland) 1991 and shall come into operation on 1st October 1991.

*Interpretation*

2. In these Regulations “the Order” means the Companies (No. 2) (Northern Ireland) Order 1990.

## PART II

## FURTHER PROVISION AS TO MARKET CONTRACTS

*Further provision as to market contracts*

3. For paragraph (2) of Article 80 of the Order (market contracts) substitute—

“(2) Except as provided in paragraph (2A), in relation to a recognised investment exchange this Part applies to—

- (a) contracts entered into by a member or designated non-member of the exchange which are either—
  - (i) contracts made on the exchange or on an exchange to whose undertaking the exchange has succeeded whether by amalgamation, merger or otherwise; or
  - (ii) contracts in the making of which the member or designated non-member was subject to the rules of the exchange or of an exchange to whose undertaking the exchange has succeeded whether by amalgamation, merger or otherwise; and
- (b) contracts subject to the rules of the exchange entered into by the exchange for the purposes of or in connection with the provision of clearing services.

A “designated non-member” means a person in respect of whom action may be taken under the default rules of the exchange but who is not a member of the exchange.

(2A) This Part does not apply to contracts falling within paragraph (2)(a) where the exchange in question is a recognised overseas investment exchange.”

## PART III

## INSOLVENCY PROCEEDINGS

*Voting at meetings of creditors*

4.—(1) Article 82 of the Order (proceedings of exchange or clearing house take precedence over insolvency procedures) shall be amended as follows.

(2) After paragraph (4) there shall be inserted the following new paragraph—

“(4A) However, prior to the completion of default proceedings—

(a) where it appears to the chairman of the meeting of creditors that a sum will be certified under Article 85(1) to be payable, paragraph (4) shall not prevent any proof including or consisting of an estimate of that sum which has been lodged from being admitted for the purpose only of determining the entitlement of a creditor to vote at a meeting of creditors; and

(b) a creditor whose proof has been lodged and admitted for the purpose of determining the entitlement of a creditor to vote at a meeting of creditors and which has not been subsequently wholly withdrawn, disallowed or rejected, is eligible as a creditor to be a member of a liquidation committee or, in bankruptcy proceedings, a creditors’ committee.”.

(3) In paragraph (5) for the words “paragraph (4)” there shall be substituted the words “paragraphs (4) and (4A)”.

*Ranking of expenses of relevant office-holder*

5. At the end of paragraph (4) of Article 83 of the Order (duty to give assistance for purposes of default proceedings) there shall be added the following words—

“and for the purpose of determining the priority in which his expenses are payable out of the assets, sums in respect of time spent shall be treated as his remuneration and other sums shall be treated as his disbursements.”.

## PART IV

REPORTS BY RECOGNISED OVERSEAS INVESTMENT EXCHANGE OR  
CLEARING HOUSE*Duty of recognised overseas investment exchange or clearing house to report on completion of default proceedings*

6.—(1) Article 85 of the Order (duty to report on completion of default proceedings) shall be amended as follows.

(2) At the beginning of paragraph (1) insert “Subject to paragraph (1A),”.

(3) After paragraph (1) insert the following new paragraph—

“(1A) A recognised overseas investment exchange or recognised overseas clearing house shall not be subject to the obligation under paragraph (1) unless it has been notified by the Secretary of State that a report is required for the purpose of insolvency proceedings in any part of the United Kingdom.”.

## PART V

### MARKET CHARGES

#### *Interpretation of Part V*

##### 7. In this Part—

“the Bank” means the Bank of England;

“business day” has the same meaning as in Article 90(3) of the Order;

“CGO” means the Central Gilts Office of the Bank;

“CGO Service” means the computer-based system established by the Bank and The Stock Exchange to facilitate the transfer of specified securities;

“CGO Service charge” means a charge of the kind described in Article 95(1)(c) of the Order;

“CGO Service member” means a person who is entitled by contract with the Bank to use the CGO Service;

“former CGO Service member” means a person whose entitlement by contract with the Bank to use the CGO Service has been terminated or suspended;

“market charge” means a charge which is a market charge for the purposes of Part V of the Order;

“settlement bank” means a person who has agreed under a contract with the Bank to make payments of the kind mentioned in Article 95(1)(c) of the Order;

“specified securities” has the meaning given in Article 95(3) of the Order;

“Talisman” means The Stock Exchange settlement system known as Talisman;

“Talisman charge” means a charge granted in favour of The Stock Exchange over property credited to an account within Talisman maintained in the name of the chargor in respect of certain property beneficially owned by the chargor; and

“transfer” when used in relation to specified securities has the meaning given in Article 95(3) of the Order.

#### *Charges on land or any interest in land not to be treated as market charges*

8.—(1) No charge, whether fixed or floating, shall be treated as a market charge to the extent that it is a charge on land or any interest in land.

(2) For the purposes of paragraph (1), a charge on a debenture forming part of an issue or series shall not be treated as a charge on land or any interest

in land by reason of the fact that the debenture is secured by a charge on land or any interest in land.

*Amendments to Article 95 of the Order concerning certain charges granted in favour of The Stock Exchange and certain charges securing debts and liabilities arising in connection with allotment of specified securities*

9. Article 95 of the Order (market charges) shall be amended—

(a) by inserting the following sub-paragraph after Article 95(1)(a)—

“(aa) in favour of The Stock Exchange, for the purpose of securing debts or liabilities arising in connection with short term certificates;”;

(b) by inserting, in Article 95(1)(c), the words “or allotment” after the word “transfer” and the words “or allottee” after the word “transferee”;

(c) by inserting “(aa),” after the words “paragraph (1)(a),” in Article 95(2); and

(d) by substituting the following for the words “In paragraph (1)(c)—” in Article 95(3)—

“In paragraph (1)—

“short term certificate” means an instrument issued by The Stock Exchange undertaking to procure the transfer of property of a value and description specified in the instrument to or to the order of the person to whom the instrument is issued or his endorsee or to a person acting on behalf of either of them and also undertaking to make appropriate payments in cash, in the event that the obligation to procure the transfer of property cannot be discharged in whole or in part;”.

*Extent to which charge granted in favour of recognised investment exchange to be treated as market charge*

10.—(1) A charge granted in favour of a recognised investment exchange other than The Stock Exchange shall be treated as a market charge only to the extent that—

(a) it is a charge over property provided as margin in respect of market contracts entered into by the exchange for the purposes of or in connection with the provision of clearing services;

(b) in the case of a recognised UK investment exchange, it secures the obligation to pay to the exchange the net sum referred to in paragraph 9(2)(a) of Schedule 21 to the Companies Act 1989(a) as it applies by virtue of paragraph 1(4) of that Schedule; and

(c) in the case of a recognised overseas investment exchange, it secures the obligation to reimburse the cost (other than fees and other incidental expenses) incurred by the exchange in settling unsettled market contracts in respect of which the charged property is provided as margin.

(2) A charge granted in favour of The Stock Exchange shall be treated as a market charge only to the extent that—

- (a) it is a charge of the kind described in paragraph (1); or
- (b) it is a Talisman charge and secures an obligation of either or both of the kinds mentioned in paragraph (3).

(3) The obligations mentioned in this paragraph are—

- (a) the obligation of the chargor to reimburse The Stock Exchange for payments (including stamp duty and taxes but excluding Stock Exchange fees and incidental expenses arising from the operation by The Stock Exchange of settlement arrangements) made by The Stock Exchange in settling, through Talisman, market contracts entered into by the chargor; and
- (b) the obligation of the chargor to reimburse The Stock Exchange the amount of any payment it has made pursuant to a short term certificate.

(4) In paragraph (3), “short term certificate” means an instrument issued by The Stock Exchange undertaking to procure the transfer of property of a value and description specified in the instrument to or to the order of the person to whom the instrument is issued or his endorsee or to a person acting on behalf of either of them and also undertaking to make appropriate payments in cash, in the event that the obligation to procure the transfer of property cannot be discharged in whole or in part.

*Extent to which charge granted in favour of recognised clearing house to be treated as market charge*

**11.** A charge granted in favour of a recognised clearing house shall be treated as a market charge only to the extent that—

- (a) it is a charge over property provided as margin in respect of market contracts entered into by the clearing house;
- (b) in the case of a recognised UK clearing house, it secures the obligation to pay to the clearing house the net sum referred to in paragraph 9(2)(a) of Schedule 21 to the Companies Act 1989; and
- (c) in the case of a recognised overseas clearing house, it secures the obligation to reimburse the cost (other than fees or other incidental expenses) incurred by the clearing house in settling unsettled market contracts in respect of which the charged property is provided as margin.

*Circumstances in which CGO Service charge to be treated as market charge*

**12.** A CGO Service charge shall be treated as a market charge only if—

- (a) it is granted to a settlement bank by a person for the purpose of securing debts or liabilities of the kind mentioned in Article 95(1)(c) of the Order incurred by that person through his use of the CGO Service as a CGO Service member; and
- (b) it contains provisions which refer expressly to the CGO.

*Extent to which CGO Service charge to be treated as market charge*

**13.** A CGO Service charge shall be treated as a market charge only to the extent that—

- (a) it is a charge over any one or more of the following—
  - (i) specified securities held within the CGO Service to the account of a CGO Service member or a former CGO Service member;
  - (ii) specified securities which were held as mentioned in subparagraph (i) immediately prior to their being removed from the CGO Service consequent upon the person in question becoming a former CGO Service member;
  - (iii) sums receivable by a CGO Service member or former CGO Service member representing interest accrued on specified securities held within the CGO Service to his account or which were so held immediately prior to their being removed from the CGO Service consequent upon his becoming a former CGO Service member;
  - (iv) sums receivable by a CGO Service member or former CGO Service member in respect of the redemption or conversion of specified securities which were held within the CGO Service to his account at the time that the relevant securities were redeemed or converted or which were so held immediately prior to their being removed from the CGO Service consequent upon his becoming a former CGO Service member; and
  - (v) sums receivable by a CGO Service member or former CGO Service member in respect of the transfer by him of specified securities through the medium of the CGO Service; and
- (b) it secures the obligation of a CGO Service member or former CGO Service member to reimburse a settlement bank for the amount due from him to the settlement bank as a result of the settlement bank having discharged or become obliged to discharge payment obligations in respect of transfers or allotments of specified securities made to him through the medium of the CGO Service.

*Limitation on disapplication of Articles 23(1)(b) and 24(3)(c) of the Insolvency Order in relation to CGO Service charges*

**14.**—(1) In this regulation “qualifying period” means the period beginning with the fifth business day before the day on which a petition for the making of an administration order in relation to the relevant CGO Service member or former CGO Service member is presented and ending with the second business day after the day on which an administration order is made in relation to the relevant CGO Service member or former CGO Service member pursuant to the petition.

(2) The disapplication of Articles 23(1)(b) and 24(3)(c) of the Insolvency Order by Article 97(1)(a) of the Order shall be limited in respect of a CGO Service charge so that it has effect only to the extent necessary to enable there to be realised, whether through the sale of specified securities or otherwise, a sum equal to whichever is less of the following—



- (a) the total amount of payment obligations discharged by the settlement bank in respect of transfers and allotments of specified securities made during the qualifying period to the relevant CGO Service member or former CGO Service member through the medium of the CGO Service less the total amount of payment obligations discharged to the settlement bank in respect of transfers of specified securities made during the qualifying period by the relevant CGO Service member or former CGO Service member through the medium of the CGO Service; and
- (b) the amount (if any) described in regulation 13(b) due to the settlement bank from the relevant CGO Service member or former CGO Service member.

*Ability of administrator or receiver to recover assets in case of property subject to CGO Service charge or Talisman charge*

**15.**—(1) The disapplication of Articles 28(1) and (2) and 53 of the Insolvency Order by Article 97(1)(b) and (3) of the Order shall cease to have effect in respect of a charge which is either a CGO Service charge or a Talisman charge after the end of the second business day after the day on which an administration order is made or, as the case may be, an administrative receiver is appointed, in relation to the grantor of the charge, in relation to property subject to it which—

- (a) in the case of a CGO Service charge, is not, on the basis of a valuation in accordance with paragraph (2), required for the realisation of whichever is the less of the sum referred to in regulation 14(2)(a) and the amount referred to in regulation 14(2)(b) due to the settlement bank at the close of business on the second business day referred to above; and
- (b) in the case of a Talisman charge is not, on the basis of a valuation in accordance with paragraph (2), required to enable The Stock Exchange to reimburse itself for any payment it has made of the kind referred to in regulation 10(3).

(2) For the purposes of paragraph (1) the value of property shall, except in a case falling within paragraph (3), be such as may be agreed between whichever is relevant of the administrator or administrative receiver on the one hand and the settlement bank or The Stock Exchange on the other.

(3) For the purposes of paragraph (1), the value of any investment for which a price for the second business day referred to above is quoted in the Daily Official List of The Stock Exchange shall—

- (a) in a case in which two prices are so quoted, be an amount equal to the average of those two prices, adjusted where appropriate to take account of any accrued interest; and
- (b) in a case in which one price is so quoted, be an amount equal to that price, adjusted where appropriate to take account of any accrued interest.

## PART VI

## LEGAL PROCEEDINGS

*Applications for order under Article 97(2) of the Order*

**16.** In paragraph (2) of Article 97 of the Order (administration orders, etc.) after the words “*pari passu* with the market charge,” there shall be inserted the words “on the application of any person interested”.

*Court having jurisdiction in respect of proceedings under Part V of the Order*

**17.—(1)** For the purposes of Articles 84, 86, 87 and 97(2) and (5) of the Order (various legal proceedings under Part V of the Order) “the court” shall be the High Court.

(2) The rules regulating the practice and procedure of the High Court in relation to applications under Articles 84, 86, 87 and 97 of the Order shall be the rules applying in relation to applications to that Court under the Insolvency Order.

Sealed with the Official Seal of the Department of Economic  
Development on 1st October 1991.

(L.S.)

A. H. McAlister

Assistant Secretary

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations make various amendments and modifications to the provisions of Part V of the Companies (No. 2) (Northern Ireland) Order 1990 ("the Order") which concerns the effects of insolvency law, and the enforcement of certain rights and remedies, on the operation of certain financial markets. One effect of Part V of the Order is to modify the way in which insolvency law applies in relation to certain contracts defined as "market contracts". Regulation 3 amends the definition of "market contracts" for the purposes of Part V. Regulations 4 and 5 make provision concerning the exercise of voting rights at meetings of creditors and the ranking, in insolvency, of expenses incurred by insolvency office holders in providing assistance under the Part. Regulation 6 restricts the circumstances in which an overseas investment exchange or clearing house recognised under the Financial Services Act 1986 (c. 60) is obliged to make a report under Article 85 of the Order.

Regulations 7 to 15 make various provisions as to charges which are treated as "market charges" for the purposes of Part V of the Order. Part V modifies the way in which market charges are treated in an administration. Regulation 8 makes provision concerning the treatment of charges on land or any interest in land. Regulation 9 provides that certain charges granted in favour of The Stock Exchange in relation to short term certificates are to be treated as market charges. Regulation 9 also extends Article 95(1)(c) of the Order to cover charges granted in connection with the allotment of securities of the kind mentioned in that Article. Regulations 10 and 11 contain provision as to the extent to which charges granted in favour of an investment exchange or clearing house recognised under the Financial Services Act 1986 are to be treated as market charges. Regulations 12 and 13 make provision as to the circumstances in which and the extent to which charges of the kind described in Article 95(1)(c) ("CGO Service charges") are to be treated as market charges. (CGO Service charges are charges granted in connection with the assured payments system connected with the Central Gilts Office of the Bank of England.) Regulation 14 limits the disapplication, by Article 97(1) of the Order, of Articles 23(1)(b) and 24(3)(c) of the Insolvency (Northern Ireland) Order 1989 in relation to CGO Service charges. Regulation 15 makes provision concerning the ability of an administrator or a receiver to recover assets subject to a CGO Service charge or to a limited class of charge granted in favour of The Stock Exchange.

Regulations 16 and 17 make provision as to the persons who can apply to the court for an order under Article 97(2) of the Order and as to the court which has jurisdiction to hear proceedings under Part V of the Order.

The provisions of Part V of the Order, with the exception of Articles 92 to 94, 98, 100 and 103, were brought into operation on 1st October 1991 by the Companies (1990 No. 2 Order) (Commencement No. 5) Order (Northern Ireland) 1991 (S.R. 1991 No. 438 (C. 22)).