This draft Statutory Instrument supersedes a draft of the same title which was laid before Parliament and published on 10th January 2017(ISBN 978-0-11-115298-0), and is being issued free of charge to all known recipients of the superseded draft.

Draft Regulations laid before Parliament under section 235(2) and (5) of the Banking Act 2009, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2017 No. 000

FINANCIAL SERVICES AND MARKETS

The Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2017

Made - - - - ***

Coming into force in accordance with regulation 1

The Treasury make the following Regulations in exercise of the powers conferred by sections 232(6)(a) and (d), 233, 234 and 259(1) of the Banking Act 2009(**a**) (the power in section 233 not having lapsed under section 235(4)).

Before laying these Regulations before Parliament in draft the Treasury consulted in accordance with section 235(3) of that Act.

A draft of these Regulations has been laid before and approved by resolution of each House of Parliament in accordance with section 235(2) and (5) of that Act.

PART 1

Introductory provision

Citation and commencement

1. These Regulations may be cited as the Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2017, and come into force on the 21st day after the day on which they are made.

PART 2

Definition of "investment bank"

(**a**) 2009 c. 1. Sections 232 to 236 have been amended by the Financial Services Act 2012 (c. 21), section 106 and Schedule 17, Part 4. Section 232 has also been amended by S.I. 2011/239 and 2013/636.

Amendment of definition

2.—(1) An institution of a class specified in paragraph (2) is to be treated as an investment bank for the purpose of sections 232 to 236 of the Banking Act 2009.

(2) This paragraph specifies the following classes of institution—

(a) an institution which has permission under Part 4A of the Financial Services and Markets Act 2000(**a**) to carry on the activity specified by article 51ZA of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**b**) (managing a UCITS) or article 51ZC of that Order (managing an AIF); and

(b) an institution which has permission under Part 4A of that Act to carry on the regulated activity specified by article 51ZB of that Order (acting as trustee or depositary of a UCITS) or article 51ZD of that Order (acting as trustee or depositary of an AIF).

Amendment of the Banking Act 2009 in consequence of regulation 2

3. In section 232 of the Banking Act 2009 (definition of "investment bank")—

(a) in subsection (2) after paragraph (a) insert—

"(aa) managing an AIF or a UCITS,

(ab) acting as trustee or depositary of an AIF or a UCITS,"; and

(b) after subsection (2) insert—

"(2A) Subsection (2) must be read with section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under section 22(**c**).".

PART 3

Investment bank insolvency regulations

Amendment of the Investment Bank Special Administration Regulations 2011

4. The Investment Bank Special Administration Regulations 2011(**d**) are amended as follows.

Interpretation of additional expressions

5. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of "client" insert—

""client money account" means an account which the investment bank maintains in accordance with client money rules, including an account with any person which the investment bank maintains for the purpose of—

(a) any transaction with or by that person for a client's benefit; or

(b) meeting a client's obligation to provide collateral for a transaction;

"client money" means client assets which are money received or held by an investment bank for, or on behalf of, clients;

(**a**) 2000 c. 8. Part 4A was substituted by the Financial Services Act 2012, section 11(2).

(**b**) S.I. 2001/544, as amended by S.I. 2013/1773. There are other amendments, but they are not relevant to these Regulations.

(**c**) See the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), as amended by S.I. 2013/1773 (for the activity of managing an AIF or a UCITS see articles 51ZA and 51ZC, and for the activity of acting as trustee or depositary of an AIF or a UCITS see articles 51ZB and 51ZD).

(**d**) S.I. 2011/245, as amended by S.I. 2013/472 and 2016/ [*the Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2016*]. There are other amendments, but they are not relevant to these Regulations.

"client money pool" means the pool of client money which is held on trust by the investment bank in accordance with client money rules and has been pooled in accordance with those rules for the purpose of distribution;

"client money rules" means rules made under Part 9A of FSMA(**a**) (rules and guidance) which make provision relating to the handling and distribution of money held by a person who is authorised for the purposes of FSMA;";

(ii) after the definition of "FCA" insert—

""foreign property" has the meaning given by section 39(2) of the Act;"; and

(b) after paragraph (2) insert—

"(2A) In these Regulations a reference to the investment bank's own bank accounts includes a reference to any account, other than a client money account, opened by the administrator for the purposes of the special administration.".

Overview

6. In regulation 3 (overview), in paragraph (3) re-number sub-paragraphs (c) and (d) so that they become paragraphs (i) and (ii) of sub-paragraph (b).

Special administration objectives—duties of co-operation for the achievement of Objective 1

7. After regulation 10 (special administration objectives) insert—

"**Objective 1—duty of administrator to work with the FSCS**

10A.—(1) The administrator must—

(a) as soon as reasonably practicable after appointment as the administrator, inform the FSCS of the value of client assets held by the investment bank for each of the clients of the investment bank;

(b) keep the FSCS informed about progress towards the achievement of Objective 1;

(c) comply, as soon as reasonably practicable, with any request by the FSCS for the provision of information or the production of documents relating to the client assets held by the investment bank; and

(d) at the request of the FSCS, provide any assistance identified by the FSCS as being necessary for the purpose of enabling the FSCS to administer the compensation scheme in relation to the entitlement of clients of the investment bank to compensation.

(2) Where the administrator is required by this regulation to provide any information or produce any document, the administrator may provide the information or produce the document in hard copy or in electronic format.

(3) This regulation does not apply if the administrator is appointed under a special administration (bank insolvency) order (within the meaning given by paragraph 2 of Schedule 1).".

Transfer of client assets

8. After regulation 10A(**b**) insert—

"**Objective 1—transfer of client assets**

10B.—(1) This regulation applies where—

(**a**) Part 9A of FSMA was substituted by the Financial Services Act 2012, section 24(1).
(**b**) Regulation 10A is inserted by regulation 7 of these Regulations.

(a) the administrator, in pursuit of Objective 1 (whether or not also in pursuit of Objective 3) enters into a binding arrangement with another financial institution for the transfer to that institution ("the transferee") of all or some of the property, rights and liabilities of the investment bank; and

(b) for the purposes of that transfer the arrangement includes provision for a transfer of client assets to the transferee or to a person who has undertaken to receive or hold any of the assets to the order of the transferee.

(2) This regulation is subject to the restrictions on partial property transfers in regulations 10C to 10G.

(3) The transfer of client assets which the investment bank has undertaken to hold under a client contract and of relevant rights and liabilities is to have effect in spite of any—

(a) restriction affecting what can or cannot be assigned or transferred by the investment bank (whether generally or by a particular person or particular description of persons);

(b) requirement to give notice to, or obtain the consent (however referred to) of, any person who is party to the client contract; or

(c) entitlement of any person to the return of the assets otherwise than by transfer under the arrangement.

(4) For these purposes it does not matter whether a restriction, requirement or entitlement has effect by virtue of a provision contained in a contract or an enactment, or in any other way, except that in paragraph (3)(a) a restriction does not include a restriction in client money rules.

(5) To the extent that rights and liabilities under a client contract are transferred by the arrangement, the contract is to be treated for the purposes of the arrangement as if it had been made by the transferee rather than the investment bank.

(6) The transferee may vary the terms of client contracts without obtaining the agreement of persons who are party to the contracts to the extent necessary for giving effect to the transfer and ensuring that the powers, rights and obligations of the transferee acting as a trustee are exercisable.

(7) Where necessary for the purposes of the arrangement the administrator may disclose to the transferee all information which is, in the administrator's view, relevant to the transfer of client assets or rights and liabilities under client contracts.

(8) Subject to paragraph (9), paragraph (7) overrides any contractual or other requirement to keep information in confidence.

(9) Paragraphs (7) and (8) do not authorise a disclosure, in contravention of any provisions of the Data Protection Act 1998(**a**), of any personal data which are not exempt from the provisions of that Act.

(10) The arrangement must include such provision as the administrator thinks necessary to ensure that clients whose assets are to be transferred will be able to exercise their rights in relation to the assets as soon as reasonably practicable after the transfer.

(11) For the purposes of this regulation, if the arrangement purports to transfer all of the property, rights and liabilities of the investment bank, it is to be treated as having done so effectively (so that none of regulations 10C to 10G applies to it) notwithstanding the possibility that any property, right or liability purportedly transferred is foreign property and might not have been effectively transferred by the arrangement.

(12) In this regulation a reference to rights and liabilities of the investment bank or to rights and liabilities under a client contract, in relation to property held by the investment bank on trust (however arising), includes a reference to—

(a) the legal and beneficial interest of the investment bank in the property; and

---

(**a**) 1998 c. 29.

(b) the powers and obligations of the investment bank acting as a trustee of the property.

(13) In this regulation—

"client assets" means client assets (within the meaning given by section 232(4) of the Act) and assets equivalent to those which the investment bank undertook to hold for clients;

"client contract" means a contract under which the investment bank undertook to—

(a) receive or hold client assets; or

(b) provide any services or enter into any transactions for the benefit of a particular client in relation to the investment bank's holding of client assets for that client;

"partial property transfer" means an arrangement of a kind referred to in paragraph (1) for the transfer of some, but not all, of the property, rights and liabilities of the investment bank; and

"relevant rights and liabilities", in relation to a client contract, means the rights and liabilities under the contract so far as they have effect in relation to any client assets which are to be transferred by the arrangement.

Restrictions on partial property transfers—general provision

10C.—(1) Regulation 10B has effect in relation to a partial property transfer as if paragraph (3)(b) of that regulation were omitted.

(2) Paragraph (1) does not apply in relation to the transfer of protected rights and liabilities (within the meaning given in regulation 10D(2)) or the transfer of any property, benefits, rights or liabilities to which regulation 10E, 10F or 10G applies.

(3) A partial property transfer must include such provision as the administrator thinks appropriate—

(a) to ensure that a client whose client assets are to be transferred by the arrangement will be entitled to demand a transfer back to the investment bank of assets which are transferred ("reverse transfer");

(b) for the identification of assets for the purposes of a reverse transfer; and

(c) unless the investment bank has ceased to satisfy Condition 1 in section 232 of the Act (definition of "investment bank"), to ensure that the transferee is obliged to give effect to the reverse transfer as soon as reasonably practicable after the demand is made.

(4) The administrator must take all steps necessary to give effect to the reverse transfer.

(5) A reverse transfer has effect to transfer back to the investment bank the relevant rights and liabilities transferred by the arrangement so far as they have effect in relation to the client assets which are transferred back to the investment bank.

(6) In this regulation "client assets", "partial property transfer" and "relevant rights and liabilities" have the meaning given in regulation 10B(13).

Restrictions on partial property transfers—set-off and netting arrangements

10D.—(1) A partial property transfer may not provide for the transfer of some, but not all, of the protected rights and liabilities between a client or other person ("C") and the investment bank.

(2) Rights and liabilities between C and the investment bank are protected if—

(a) they are rights and liabilities which C or the investment bank is entitled to set off or net under a particular set-off arrangement, netting arrangement or title transfer financial collateral arrangement which C has entered into with the investment bank; and

(b) they are not excluded rights or excluded liabilities.

(3) For the purpose of paragraph (1), a partial property transfer which purports to transfer all of the protected rights and liabilities between C and the investment bank is to be treated as having done so effectively (and not in contravention of paragraph (1)) notwithstanding the possibility that any of the protected rights or liabilities are foreign property and might not have been effectively transferred by the arrangement.

(4) For the purposes of paragraph (2), it is immaterial whether or not—

(a) the arrangement which permits C or the investment bank to set off or net rights and liabilities also permits C or the investment bank to set off or net rights and liabilities with another person; or

(b) the right of C or the investment bank to set off or net is exercisable only on the occurrence of a particular event.

(5) A partial property transfer made in contravention of this regulation does not affect the exercise of the right to set off or net.

(6) In this regulation—

"excluded rights", in relation to rights between C and the investment bank, has the same meaning as it has in relation to rights between C and a banking institution by virtue of articles 1(3) and 3 of the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009(**a**), except that in article 1(3), in the definition of "excluded rights"—

(a) in sub-paragraph (e) the reference to subordinated debt is to be read as a reference to subordinated debt issued by C or by the investment bank; and

(b) in sub-paragraph (f)—

(i) the reference to a set-off arrangement, netting arrangement or title transfer financial collateral arrangement is to be read as a reference to a set-off arrangement, netting arrangement or title transfer financial collateral arrangement referred to in this regulation; and

(ii) the references to transferable securities are to be read as references to transferable securities issued by C or by the investment bank;

"excluded liabilities" means the liabilities which correspond with excluded rights;

"netting arrangement" means an arrangement under which a number of claims or obligations can be converted into a net claim or obligation and includes, in particular—

(a) a "close-out" netting arrangement, under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set off against each other or to be converted into a net debt;

(b) an arrangement which provides for netting (within the meaning given by regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(**b**)); and

(c) an arrangement which includes a close-out netting provision (within the meaning given by regulation 3(1) of the Financial Collateral Arrangements (No 2) Regulations 2003(**c**));

"partial property transfer" has the same meaning as in regulation 10B(13);

"set-off arrangement" means an arrangement under which two or more debts, claims or obligations can be set off against each other; and

---

(**a**) S.I. 2009/322, as amended by S.I. 2009/1826; 2013/472 and 2013/3115. There are other amendments, but they are not relevant to these Regulations.

(**b**) S.I. 1999/2979. There are amendments, but they are not relevant to these Regulations.

(**c**) S.I. 2003/3226. Regulation 3 was re-numbered regulation 3(1) by S.I. 2010/2993. There are other amendments, but they are not relevant to these Regulations.

"title transfer financial collateral arrangement" has the meaning given by regulation 3(1) of the Financial Collateral Arrangements (No 2) Regulations 2003.

Restrictions on partial property transfers—security interests

10E.—(1) Subject to paragraph (6), paragraphs (3), (4) and (5) apply where under any binding arrangement one party owes to the other a liability which is secured against any property or rights.

(2) For these purposes it is immaterial whether or not—

(a) the liability is secured against all or substantially all of the property or rights of a person;

(b) the liability is secured against specified property or rights; or

(c) the property or rights against which the liability is secured are owned by the person who owes the liability.

(3) A partial property transfer may not transfer the property or rights against which the liability is secured unless that liability and the benefit of the security are also transferred.

(4) A partial property transfer may not transfer the benefit of the security unless the liability which is secured is also transferred.

(5) A partial property transfer may not transfer the liability unless the benefit of the security is also transferred.

(6) Paragraphs (3), (4) and (5) do not apply if the investment bank entered into the binding arrangement in contravention of a rule prohibiting such arrangements made by the FCA or the PRA under FSMA or otherwise than in accordance with the investment bank's Part 4A permission (within the meaning given by section 55A(5) of FSMA(**a**)).

(7) For the purposes of paragraphs (3), (4) and (5), a partial property transfer which purports to transfer any property, rights and liabilities is to be treated as having done so effectively (and not in contravention of any of those paragraphs) notwithstanding the possibility that any of that property, or of those rights or liabilities, is foreign property and might not have been effectively transferred by the arrangement.

(8) In this regulation "partial property transfer" has the same meaning as in regulation 10B(13).

Restrictions on partial property transfers—capital market arrangements

10F.—(1) Subject to paragraph (2), a partial property transfer may not provide for the transfer of some, but not all, of the property, rights and liabilities which are or form part of a capital market arrangement to which the investment bank is a party.

(2) Paragraph (1) does not apply where the only property, rights and liabilities which are, or are not, transferred relate to deposits.

(3) For the purpose of paragraph (1), a partial property transfer which purports to transfer all of the property, rights and liabilities which are or form part of a capital market arrangement to which the investment bank is a party is to be treated as having done so effectively (and not in contravention of paragraph (1)) notwithstanding the possibility that any property, right or liability purportedly transferred is foreign property and might not have been effectively transferred by the arrangement.

(4) In this regulation—

"capital market arrangement" has the meaning given by paragraph 1 of Schedule 2A to the Insolvency Act(**b**);

(**a**) Section 55A was substituted (together with the rest of Part 4A of FSMA) by the Financial Services Act 2012, section 11(2).
(**b**) Schedule 2A was inserted by the Enterprise Act 2002 (c. 40), section 250(2) and Schedule 18, and was amended by S.I. 2003/1468.

"deposit" has the same meaning as in article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**a**), disregarding the exclusions in other articles of that Order; and

"partial property transfer" has the same meaning as in regulation 10B(13).

Restrictions on partial property transfers—financial markets

10G.—(1) A partial property transfer may not transfer property, rights or liabilities to the extent that doing so would have the effect of modifying, modifying the operation of, or rendering unenforceable—

(a) a market contract;

(b) the default rules of a recognised investment exchange or recognised clearing house; or

(c) the rules of a recognised investment exchange or recognised clearing house as to the settlement of market contracts not dealt with under its default rules.

(2) A partial property transfer is void in so far as it is made in contravention of this regulation.

(3) In this regulation—

"default rules" has the meaning given in section 188 of the Companies Act 1989(**b**); and

"partial property transfer" has the same meaning as in regulation 10B(13).".

Distribution of client money

9. After regulation 10G(**c**) insert—

"**Objective 1—post-administration reconciliation of accounts and records relating to client money**

10H.—(1) Immediately after being appointed as the administrator, the administrator must carry out a client money reconciliation in accordance with paragraph (2) and make any transfer required by paragraph (3) or (4).

(2) The client money reconciliation must—

(a) be carried out in accordance with the method for carrying out client money reconciliations adopted by the investment bank to meet client money rules, whether or not the method adopted is in compliance with those rules;

(b) be based on records and accounts of the investment bank as they stood immediately after the last such reconciliation by the investment bank (but taking no further account of money received, or payments, transfers or transactions made, by the investment bank of which account was taken for the purposes of that reconciliation); and

(c) take account of money received, and payments, transfers and transactions made, by the investment bank after the last such reconciliation and before the appointment of the administrator.

(3) Where the client money reconciliation shows that amount A exceeds amount B, the administrator must transfer an amount equal to the difference from the investment bank's own bank accounts to any client money account other than a client transaction account.

(**a**) S.I. 2001/544, as amended by S.I. 2002/682.
(**b**) 1989 c. 40. Section 188 was amended by S.I. 2009/853, 2013/504 and 2013/1908.
(**c**) Regulation 10G is inserted by regulation 8 of these Regulations.

(4) Where the client money reconciliation shows that amount B exceeds amount A, the administrator must transfer an amount equal to the difference from the client money accounts to the investment bank's own bank accounts.

(5) In this regulation—

"amount A" means the total amount of client money which the investment bank, according to its own records and accounts, is required to hold in accordance with client money rules;

"amount B" means the total amount of client money which the investment bank holds in client money accounts;

"client money reconciliation" means a reconciliation of amount A with amount B; and

"client transaction account" means an account with any person which the investment bank maintains for the purpose of—

(a) any transaction with or by that person for a client's benefit; or

(b) meeting a client's obligation to provide collateral for a transaction.

Objective 1—removal of right to interest on unsecured claims for the return of client money

10I.—(1) This regulation applies where—

(a) a debt arises from a liability of the investment bank to return client money;

(b) the client has not submitted a claim for payment of the debt by way of a distribution from the client money pool; and

(c) the client makes an unsecured claim for payment of the debt.

(2) The client is not entitled to interest on the debt for the period commencing on the date on which the investment bank entered special administration, except interest on such part of the debt which remains after deduction of the total amount which the client would have received on a claim for payment of the debt by way of a distribution from the client money pool.".

Distribution of client assets

10. In regulation 11 (Objective 1—distribution of client assets)—

(a) for paragraph (4) substitute—

"(4) Subject to paragraph (4A), where the administrator sets a bar date—

(a) the administrator must return client assets in accordance with the prescribed procedure; but

(b) no client assets may be returned after the bar date has been set unless the court has given its approval on an application made by the administrator in accordance with the prescribed procedure.

(4A) The administrator may, at any time after setting a bar date, return client assets without the approval of the court if (and only if)—

(a) at that time the administrator has not made any application for court approval to return client assets;

(b) the administrator has identified the person who is beneficially entitled to the assets or has a right to the assets as bailor or otherwise; and

(c) the assets are not held by the investment bank in a client omnibus account (within the meaning given in regulation 12(9)).";

(b) in paragraph (5) after "has returned client assets" insert "with the approval of the court"; and

(c) in paragraph (8) for the words from "client assets" to the end substitute "client money".

Shortfall in client assets held in omnibus account

11. In regulation 12 (Objective 1—shortfall in client assets held in omnibus account), in paragraph (1)(c) for the words from "ones" to the end substitute "client money".

Objective 1—distribution of client money

12. After regulation 12 insert—

"**Objective 1—distribution of client money**

12A.—(1) If the administrator thinks it necessary in order to expedite the return of client money, the administrator may by notice set a bar date for the submission of client money claims.

(2) In setting a bar date the administrator must allow a reasonable time after notice of the special administration has been published (in accordance with insolvency rules) for persons to be able to calculate and submit client money claims.

(3) As soon as reasonably practicable after the bar date, the administrator must make a distribution of client money in accordance with client money rules to the clients or other persons who are entitled to payment under client money claims.

(4) A person who submits a client money claim after the bar date, but before the return of client money after that date, must, so far as is reasonably practicable, be included within the distribution of client money under paragraph (3).

(5) When determining the amount to be distributed under paragraph (3), the administrator must make allowance for the entitlement to the return of client money, by way of a subsequent distribution from the client money pool, of persons who have neither made a client money claim nor received any payment under a previous distribution of client money.

(6) Where the administrator has returned client money after the bar date, no payment or part of any payment made to any person under the distribution may be recovered for the purpose of meeting a late claim.

(7) The restriction in paragraph (6) does not apply where—

(a) client money was returned to a person by the administrator in bad faith in which that person was complicit; or

(b) a person to whom client money was returned is later found to have made a false claim to the money.

(8) Where the administrator determines that a client or other person who makes a late claim would have participated in the distribution of client money under paragraph (3) if the claim had been submitted before the return of client money after the bar date, the administrator must include the claimant within a subsequent distribution from the client money pool.

(9) In this regulation—

"bar date" means a date by which clients are invited to submit client money claims for the purposes of this regulation;

"client money claims" are claims for the return of client money which has been pooled in accordance with client money rules; and

"late claim" means a client money claim received after the bar date other than a claim received after that date from a person who is included within the distribution of client money under paragraph (3).

Objectives 1 and 3—client assets (other than client money) which the administrator is unable to return to clients

12B.—(1) This regulation applies where the administrator, after setting a soft bar date, includes in the distribution plan provision for the option of setting a hard bar date.

(2) If the administrator thinks it necessary in order to expedite the return of client assets, the administrator may by a hard bar date notice set a hard bar date.

(3) The administrator may not set a hard bar date without the approval of the court given on application by the administrator.

(4) A late claim of a type described in regulation 11(1) which is submitted in response to the setting of a bar date under that regulation on or after the date on which the administrator sets a hard bar date is to be treated as a client asset claim.

(5) Where the administrator sets a hard bar date, the administrator, after that date—

(a) must return client assets to eligible claimants;

(b) may dispose of all client assets which the investment bank still holds after the return of client assets to any eligible claimants ("residual assets"); and

(c) must transfer the proceeds of any disposal of residual assets to the investment bank's own bank accounts.

(6) A person who acquires client assets on a disposal of residual assets acquires good title to them as against all clients.

(7) Where the administrator receives a client asset claim after the hard bar date ("late claim") and—

(a) the administrator has not made any arrangements for the disposal of the residual assets, or

(b) such arrangements as the administrator has made for their disposal do not prevent the administrator from returning them,

the administrator must meet the late claim out of the residual assets.

(8) Where the administrator has returned client assets after setting a hard bar date and then receives a late claim in respect of assets that have been returned—

(a) none of those assets may be recovered for the purpose of meeting the late claim; and

(b) the person to whom the assets have been returned acquires good title to them as against the late-claiming claimant.

(9) The restrictions in paragraph (8) do not apply where—

(a) the client assets were returned to a person by the administrator in bad faith in which that person was complicit; or

(b) a person to whom client assets were returned is later found to have made a false claim to them.

(10) Where a disposal of residual assets prevents the administrator from meeting a late claim—

(a) the claim which the late-claiming claimant has against the investment bank in consequence of the disposal ranks as an unsecured claim; and

(b) the value of the unsecured claim is the value of the consideration paid to the administrator for the assets disposed of which would have been returned to that claimant if their client asset claim had been made before the hard bar date.

(11) No interest is payable on the debt for which a person makes an unsecured claim under paragraph (10).

(12) This regulation does not apply to client money.

(13) In this regulation—

"client asset claim" means a claim of a type described in regulation 11(1) which is submitted in response to the setting of a hard bar date;

"distribution plan" means the plan for the return of client assets which the administrator is required to draw up in accordance with insolvency rules after setting a soft bar date;

"eligible claimant" means—

(a) a person to whom the administrator has already returned client assets under regulation 11; or

(b) a person who—

(i) submits a client asset claim on or before the hard bar date; and

(ii) would have been eligible for a return of client assets under regulation 11 if the claim had been submitted in response to the setting of the soft bar date;

"hard bar date" means a final date (subject to provision for late claims in paragraphs (7) to (10)) for the submission of claims of a type described in regulation 11(1);

"hard bar date notice" means a notice which specifies a hard bar date and includes a statement that after the end of that day the administrator—

(a) may dispose of client assets still held by the investment bank after the administrator has returned client assets to any eligible claimants; and

(b) may, consequently, be unable to meet any further client asset claims; and

"soft bar date" means a bar date set under regulation 11.

Objectives 1 and 3—client money which the administrator is unable to return to clients

12C.—(1) This regulation applies where the administrator, after setting a bar date under regulation 12A, thinks it is appropriate, in order to achieve Objective 1, to close the client money pool and treat any further claim for the return of client money as an unsecured claim.

(2) The administrator may by a hard bar date notice set a hard bar date.

(3) The administrator may not set a hard bar date without the approval of the court given on application by the administrator.

(4) Where the administrator sets a hard bar date, the administrator may not meet any final money claim received after the hard bar date.

(5) A final money claim received by the administrator after the hard bar date ranks as an unsecured claim.

(6) No interest is payable on the debt for which a person makes such a claim, except interest on such part of the debt which remains after deduction of the total amount which the client would have received by way of a distribution from the client money pool if the final money claim had been received by the administrator on or before the hard bar date.

(7) In this regulation—

"final money claim" means a claim for the return of client money which is submitted in response to the setting of a hard bar date;

"eligible claimant" means a person—

(a) to whom the administrator has already made a distribution of client money without receiving a claim for the return of client money to that person;

(b) who has submitted a claim for the return of client money other than a final money claim; or

(c) who submits a final money claim on or before the hard bar date;

"hard bar date" means a final date (subject to paragraph (5)) for the submission of claims for the return of client money; and

"hard bar date notice" means a notice which specifies a hard bar date and includes a statement that after the end of that day the administrator—

(a) may, in accordance with client money rules, transfer to the investment bank's own bank accounts any balance of the client money pool which the investment bank holds after the return of client money to eligible claimants; and

(b) may not meet any further final money claims.

Powers of the court on application to set a hard bar date

12D.—(1) On an application under regulation 12B(3) or 12C(3) for the approval of the court to set a hard bar date the court may—

(a) make an order approving the setting of a hard bar date;

(b) adjourn the hearing of the application conditionally or unconditionally; or

(c) make any other order that the court thinks appropriate.

(2) The court may make an order under paragraph (1)(a) only if—

(a) it is satisfied that the administrator has taken all reasonable measures to identify and contact persons who may be entitled to the return of client assets; and

(b) it considers that if a hard bar date is set there is no reasonable prospect—

(i) that the administrator will receive claims for the return of client assets after that date; and

(ii) in the case of an application under regulation 12B(3), that the administrator will receive claims of persons in relation to a security interest asserted over, or other entitlement to, client assets which are not client money.

Bar date notices—procedural requirements

12E.—(1) The persons to whom a bar date notice must be given are—

(a) all clients of whose claim for the return of client assets the administrator is aware;

(b) all persons whom the administrator believes have a right to assert a security interest or other entitlement over the client assets;

(c) the FCA and, where the investment bank is a PRA-authorised person, the PRA; and

(b) in a special administration (bank administration) before the Bank of England has given an Objective A Achievement Notice, the Bank of England.

(2) Paragraph (1) does not apply in relation to any such person whom the administrator has no means of contacting.

(3) A bar date notice—

(a) must be advertised once in the Gazette; and

(b) may be advertised in such other manner as the administrator thinks fit.

(4) In advertising a bar date notice under paragraph (3), the administrator must aim to ensure that the notice comes to the attention of as many persons who are eligible to submit a claim for the return of client assets as the administrator considers practicable.

(5) In this regulation—

"Gazette" means—

(a) in England and Wales, the London Gazette;

(b) in Scotland, the Edinburgh Gazette; and

(c) in Northern Ireland, the Belfast Gazette;

"bar date notice" means a notice under regulation 12A(1) or a hard bar date notice under regulation 12B or 12C; and

"Objective A Achievement Notice" has the meaning given by paragraph 3(3) of Schedule 2.

Costs of making a claim

12F.—(1) Unless the court orders otherwise, every person who submits a relevant claim bears the cost of making the claim, including costs incurred in providing documents or evidence or responding to requests for further information.

(2) "Relevant claim" means—

(a) a claim for the return of client assets which is submitted in response to the setting of a bar date under regulation 12A, 12B or 12C; or

(b) a claim in relation to a security interest asserted over, or other entitlement to, client assets, which is submitted in response to the setting of a bar date under regulation 12B.".

Continuity of supply

13. In regulation 14 (continuity of supply) in paragraph (6), in the definition of "supply" before paragraph (a) insert—

"(za) services relating to the safeguarding or administration of client assets;".

General powers, duties and effect

14. In regulation 15 (general powers, duties and effect), in Table 1 (applied provisions: Schedule B1), in the entry for Para 74 (challenge to administrator's conduct), in the third column after paragraph (d) insert—

"(e) FSCS may make an application under this paragraph on the grounds that the administrator is not performing the duties set out in regulation 10A(**a**) as quickly or as efficiently as is reasonably practicable.

(f) Any of the following persons may make an application under this paragraph on the grounds that the administrator has made, or proposes to make, a partial property transfer (within the meaning given in regulation 10B(13)) ("relevant transfer") in contravention of regulation 10E, 10F or 10G—

(i) the Bank of England;

(ii) the FCA;

(iii) where the investment bank is a PRA-authorised person, the PRA.

(g) Any person, other than the investment bank, who is party to an arrangement of a kind referred to in regulation 10E(1) or 10F(1) may make an application under this paragraph on the grounds that the administrator has made, or proposes to make, a relevant transfer in contravention of that regulation.

(h) A recognised investment exchange, a recognised clearing house or any person, other than the investment bank, who is party to a market contract may make an application under this paragraph on the grounds that the administrator has made, or proposes to make, a relevant transfer in contravention of regulation 10G.

(i) Where an application is made under this paragraph on the grounds that the administrator has made a relevant transfer in contravention of regulation 10G—

(i) sub-paragraphs (3)(a), (d) and (e) and (4) are not applied;

(ii) the court may make an order declaring that the transfer was made in contravention of the regulation concerned.

(**a**) Regulation 10A is inserted by regulation 7 of these Regulations.

(j) Where an application is made under this paragraph on the grounds that the administrator has made a relevant transfer in contravention of regulation 10E or 10F, the court may make such order as it thinks fit for restoring the position to what it would have been if the transfer had been made in contravention of the regulation concerned.

(k) The FCA and, where the investment bank is a PRA-authorised person, the PRA may make an application under this paragraph on the grounds that the administrator has failed to carry out a client money reconciliation in accordance with regulation 10H(2) or to transfer an amount in accordance with regulation 10H(3) or (4).".

Responsibility for certain costs of the administration

15. After regulation 19 insert—

"**Responsibility for certain costs of the administration**

19A.—(1) Where the administrator considers that relevant costs have been incurred in consequence of a failure by the investment bank to comply with client money rules or with any relevant requirement ("a default"), the administrator—

(a) must seek the agreement of the creditors' committee established under paragraph 57 of Schedule B1 (as applied by regulation 15) to the amount incurred in consequence of the default; or

(b) if there is no creditors' committee or the administrator is unable to agree that amount with the creditors' committee, must apply to the court for an order fixing the amount.

(2) On an application under paragraph (1)(b), the court may fix the amount incurred in consequence of the default or dismiss the application on the ground that there was no default or that no relevant costs have been incurred in consequence of the default.

(3) Paragraph (4) applies where the creditors' committee agree an amount incurred in consequence of the default or the court fixes an amount by order.

(4) Notwithstanding any provision in insolvency rules prescribing how the expenses of the special administration are to be paid, responsibility for the relevant amount is assigned to the investment bank, and accordingly that amount is to be paid out of the investment bank's assets.

(5) Where the investment bank's assets are insufficient to enable the relevant amount to be met out of those assets, paragraph (4) has effect only in relation to that part of the relevant amount which can be met out of those assets.

(6) In this regulation—

"relevant amount" means the amount of relevant costs incurred in consequence of the default as agreed by the creditors' committee or fixed by the court;

"relevant costs" means costs incurred by the administrator of applying the procedure set out in Schedule B1 (as applied by regulation 15 and as prescribed) for ascertaining particulars of the client assets held by the investment bank, and of taking custody and control and distributing those assets; and

"relevant requirement" means any requirement relating to holding client assets contained in—

(a) rules made under Part 9A of FSMA (rules and guidance) which make provision relating to the handling of client assets, other than client money, held by a person who is authorised for the purposes of FSMA;

(b) Commission Delegated Regulation (EU) No. 231/2013 of 19th December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the

Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision(**a**); or

(c) Commission Delegated Regulation (EU) 2016/438 of 17th December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries(**b**).".

Northern Irish equivalent enactments

16. In Schedule 5 (table of enactments referred to in the Regulations together with the equivalent enactment having effect in relation to Northern Ireland) after the entry for paragraph 111 of Schedule B1 to the Insolvency Act 1986(**c**) insert—

"Schedule 2A, Para 1	Schedule 1A(**d**), Para 1"	

PART 4

Transitional provisions

Transitional provision for Part 3

17.—(1) Part 3 of these Regulations does not have effect in relation to an investment bank which is in special administration on the date on which these Regulations come into force.

(2) For the purpose of this regulation an investment bank is in special administration on that date if the appointment of the administrator took effect before that date under—

(a) a special administration order made under regulation 7 of the Investment Bank Special Administration Regulations 2011 ("the principal Regulations");

(b) a special administration (bank insolvency) order made under section 97(1) of the Banking Act 2009(**e**) (as applied by paragraph 6 of Schedule 1 to the principal Regulations); or

(c) a special administration (bank administration) order made under section 144 of the Banking Act 2009 (as applied by paragraph 6 of Schedule 2 to the principal Regulations).

(3) Where paragraph (2)(b) or (c) applies to an investment bank which is a partnership, paragraph 6 of Schedule 1 to the principal Regulations or paragraph 6 of Schedule 2 to those Regulations (as the case may be) must be read with paragraph 3(a) of Schedule 4 to those Regulations.

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

(**a**) OJ No. L 83, 22.3.2013, p. 1-95.
(**b**) OJ No. L 78, 24.3.2016, p 11-30.
(**c**) 1986 c. 45.
(**d**) Schedule 1A was inserted by S.I. 2005/1455.
(**e**) 2009 c. 1.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations extend the definition of "investment bank" in section 232 of the Banking Act 2009 (c. 1) ("the Act") and amend the Investment Bank Special Administration Regulations 2011 ("the principal Regulations").

The principal Regulations provide a special administration regime for investment banks (as defined in section 232 of the Act). Part 2 of these Regulations brings two specified classes of institution within the definition of "investment bank" and amends section 232 of the Act in consequence of that change.

Part 3 of these Regulations amends the principal Regulations to implement certain recommendations made by Peter Bloxham in his review of the principal Regulations conducted under section 236 of the Act. The final review was presented to Parliament under that section in January 2014 and is available on HM Treasury's website (www.gov.uk/treasury) or from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

Regulation 5 amends regulation 2 of the principal Regulations to provide for the interpretation of expressions used in provisions inserted or substituted by other amendments.

Regulation 7 inserts regulation 10A of the principal Regulations. New regulation 10A requires the administrator to provide information and assistance to the scheme manager of the Financial Services Compensation Scheme (regulation 14 amends regulation 15 of the principal Regulations to enable the scheme manager to challenge the conduct of the administration on the grounds that the administrator is not performing the duties set out in new regulation 10A).

Regulation 8 inserts regulations 10B to 10G of the principal Regulations, which apply where the administrator, in pursuit of Objective 1, arranges a transfer of the whole or part of the investment bank's business to another financial institution. New regulation 10B removes restrictions to the transfer of clients' assets and contracts associated with the business transfer, and has the effect of treating contracts (to the extent transferred) as if they had been made by the transferee. New regulations 10C to 10G set out restrictions on what may be transferred by an arrangement which transfers just part of the investment bank's business.

Regulation 9 inserts regulations 10H and 10I of the principal Regulations. New regulation 10H requires the administrator to—

- carry out a reconciliation of the amount of client money which the investment bank, according to its own records and accounts, is required to hold in accordance with rules made by the Financial Conduct Authority with the amount of client money which it holds in client money accounts; and
- make any transfer between client money accounts and the investment bank's own bank accounts which is necessary to balance these amounts.

New regulation 10I provides that a client is not entitled to interest on a debt arising from the investment bank's liability to return client money for the period starting when the investment bank enters special administration. This applies where a client brings an unsecured claim for payment of such a debt instead of a claim for a distribution from the pool of client money held by the investment bank on trust under rules made by the Financial Conduct Authority.

The amendments in regulations 10 and 12 make provision about setting bar dates for the submission of claims for the return of client assets. A "soft bar date" does not bar a client who has failed to claim in a distribution from claiming in a subsequent distribution. A "hard bar date" is a final date for submitting claims.

Regulation 10 amends regulation 11 of the principal Regulations, which allows the administrator to set a soft bar date for the return of client assets other than client money. After setting a soft bar date the administrator must return assets in accordance with insolvency rules, but may not do so without court approval. The amendments allow assets to be returned without court approval as long as the administrator has not yet applied for court approval to return any assets, the beneficial

owner has been identified and the assets are not securities held in an account made up of multiple accounts of clients.

Regulation 12 inserts regulations 12A to 12F of the principal Regulations to allow the administrator to set a soft bar date for claims for the return of client money (12A), a hard bar date for such claims (12C) and a hard bar date for claims for the return of client assets other than client money (12B). Under new regulation 12B late claims may be met from residual assets or, if the administrator has disposed of residual assets, may be pursued as unsecured claims. Under new regulation 12C late claims may be pursued as unsecured claims. New regulation 12D sets out the powers of the court on an application to set a hard bar date.

Regulation 13 amends regulation 14 of the principal Regulations to extend provision for the continuation of specified kinds of supply contract to contracts for services relating to the safe custody of client assets.

Regulation 14 amends regulation 15 of the principal Regulations to modify further the application of paragraph 74 of Schedule B1 to the Insolvency Act 1986 to enable—

— the scheme manager of the Financial Services Compensation Scheme to challenge the conduct of the administration on the grounds that the administrator is not performing the duties set out in new regulation 10A; and

— persons interested in the performance of certain additional duties of the administrator to challenge the administrator's conduct of the administration so far as it concerns those duties.

Regulation 15 inserts new regulation 19A of the principal Regulations to provide for payment out of the investment bank's assets of any costs of identifying and distributing client assets which are incurred in consequence of a failure by the investment bank to comply with requirements relating to holding client assets.

Regulation 16 amends the table in Schedule 5 to the principal Regulations for the purposes of new regulation 10F (inserted by regulation 8), to specify the equivalent enactment in Northern Ireland which defines "capital market arrangement".

Part 4 of these Regulations makes transitional provision with respect to Part 3 of these Regulations. It provides that none of the amendments of the principal Regulations has effect in relation to an investment bank put into special administration before the date on which these Regulations come into force.

An impact assessment of the effect of these Regulations on the costs of business and the voluntary sector has been prepared and is available on HM Treasury's website (www.gov.uk/treasury) or from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum for these Regulations.

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.00

UK201701167 01/2017 19585

http://www.legislation.gov.uk/id/ukdsi/2017/9780111153222

ISBN 978-0-11-115322-2