

SCHEDULES

SCHEDULE 21

Section 156(1).

ADDITIONAL REQUIREMENTS FOR RECOGNITION

PART I

U.K. INVESTMENT EXCHANGES

Default rules

- 1 (1) The exchange must have default rules which, in the event of a member of the exchange appearing to be unable to meet his obligations in respect of one or more market contracts, enable action to be taken in respect of unsettled market contracts to which he is party.
- (2) The rules may authorise the taking of the same or similar action in relation to a member who appears to be likely to become unable to meet his obligations in respect of one or more market contracts.
- (3) The rules must enable action to be taken in respect of all unsettled market contracts, other than those entered into by a recognised clearing house for the purposes of or in connection with the provision of clearing services for the exchange.
- (4) As regards contracts entered into by the exchange for the purposes of or in connection with the provision of its own clearing services, the rules must contain provision corresponding to that required by paragraphs 9 to 11 below in the case of a UK clearing house.
- (5) As regards other contracts the rules must contain provision complying with paragraphs 2 and 3 below.

Content of rules

- 2 (1) The rules must provide for all rights and liabilities between those party as principal to unsettled market contracts to which the defaulter is party as principal to be discharged and for there to be paid by one party to the other such sum of money (if any) as may be determined in accordance with the rules.
- (2) The rules must further provide—
 - (a) for the sums so payable in respect of different contracts between the same parties to be aggregated or set off so as to produce a net sum, and
 - (b) for the certification by or on behalf of the exchange of the net sum payable or, as the case may be, of the fact that no sum is payable.

Status: This is the original version (as it was originally enacted).

- (3) The rules may make special provision with respect to, or exclude from the provisions required by sub-paragraphs (1) and (2), contracts of any description prescribed for the purposes of this sub-paragraph by regulations made by the Secretary of State.

Notification to other parties affected

- 3 The exchange must have adequate arrangements for securing that—
- (a) parties to unsettled market contracts with a defaulter acting as principal are notified as soon as reasonably practicable of the default and of any decision taken under the rules in relation to contracts to which they are a party; and
 - (b) parties to unsettled market contracts with a defaulter acting as agent and the defaulter's principals are notified as soon as reasonably practicable of the default and of the identity of the other party to the contract.

Application of default rules to designated non-members

- 4 (1) The rules may make the same or similar provision in relation to designated non-members as in relation to members of the exchange.
- (2) If such provision is made, the exchange must have adequate procedures—
- (a) for designating the persons, or descriptions of person, in respect of whom action may be taken,
 - (b) for keeping under review the question which persons or descriptions of person should be or remain so designated, and
 - (c) for withdrawing such designation.
- (3) The procedures shall be designed to secure that a person is not or does not remain designated if failure by him to meet his obligations in respect of one or more market contracts would be unlikely adversely to affect the operation of the market, and that a description of persons is not or does not remain designated if failure by a person of that description to meet his obligations in respect of one or more market contracts would be unlikely adversely to affect the operation of the market.
- (4) The exchange must have adequate arrangements—
- (a) for bringing a designation or withdrawal of designation to the attention of the person or description of persons concerned, and
 - (b) where a description of persons is designated, or the designation of a description of persons is withdrawn, for ascertaining which persons fall within that description.

Delegation of functions in connection with default procedures

- 5 The rules may make provision for the whole or part of the functions mentioned in paragraphs 1 to 4 to be performed by another body or person on behalf of the exchange.

Co-operation with other authorities

- 6 The exchange must be able and willing to co-operate, by the sharing of information and otherwise, with the Secretary of State, any relevant office-holder and any other authority or body having responsibility for any matter arising out of, or connected with, the default of a member of the exchange or any designated non-member.

Margin

- 7 Where the exchange provides its own clearing arrangements and margined transactions are effected, paragraph 14 below applies as it applies in relation to a clearing house.

PART II

U.K. CLEARING HOUSES

Default rules

- 8 (1) The clearing house must have default rules which, in the event of a member of the clearing house appearing to be unable to meet his obligations in respect of one or more market contracts, enable action to be taken to close out his position in relation to all unsettled market contracts to which he is a party.
- (2) The rules may authorise the taking of the same or similar action where a member appears to be likely to become unable to meet his obligations in respect of one or more market contracts.

Content of rules

- 9 (1) The rules must provide for all rights and liabilities of the defaulter under or in respect of unsettled market contracts to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the rules.
- (2) The rules must further provide—
- (a) for the sums so payable by or to the defaulter in respect of different contracts to be aggregated or set off so as to produce a net sum;
 - (b) for that sum—
 - (i) if payable by the defaulter to the clearing house, to be set off against any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property) so as to produce a further net sum, and
 - (ii) if payable by the clearing house to the defaulter to be aggregated with any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property); and
 - (c) for the certification by or on behalf of the clearing house of the sum finally payable or, as the case may be, of the fact that no sum is payable.
- 10 (1) The reference in paragraph 9 to the rights and liabilities of a defaulter under or in respect of an unsettled market contract includes (without prejudice to the generality of that provision) rights and liabilities arising in consequence of action taken under provisions of the rules authorising—
- (a) the effecting by the clearing house of corresponding contracts in relation to unsettled market contracts to which the defaulter is a party;
 - (b) the transfer of the defaulter's position under an unsettled market contract to another member of the clearing house;
 - (c) the exercise by the clearing house of any option granted by an unsettled market contract.

Status: This is the original version (as it was originally enacted).

- (2) A “corresponding contract” means a contract on the same terms (except as to price or premium) as the market contract, but under which the person who is the buyer under the market contract agrees to sell and the person who is the seller under the market contract agrees to buy.

This sub-paragraph applies with any necessary modifications in relation to a market contract which is not an agreement to sell.

- (3) The reference in paragraph 9 to the rights and liabilities of a defaulter under or in respect of an unsettled market contract does not include, where he acts as agent, rights or liabilities of his arising out of the relationship of principal and agent.

Notification to other parties affected

- 11 The clearing house must have adequate arrangements for securing that parties to unsettled market contracts with a defaulter are notified as soon as reasonably practicable of the default and of any decision taken under the rules in relation to contracts to which they are a party.

Delegation of functions in connection with default procedures

- 12 The rules may make provision for the whole or part of the functions mentioned in paragraphs 8 to 11 to be performed by another body or person on behalf of the clearing house.

Co-operation with other authorities

- 13 The clearing house must be able and willing to co-operate, by the sharing of information and otherwise, with the Secretary of State, any relevant office-holder and any other authority or body having responsibility for any matter arising out of, or connected with, the default of a member of the clearing house.

Margin

- 14 (1) The rules of the clearing house must provide that, in the event of a default, margin provided by the defaulter for his own account is not to be applied to meet a shortfall on a client account.
- (2) This is without prejudice to the requirements of any relevant regulations under section 55 of the Financial Services Act 1986 (clients' money).

PART III

OVERSEAS INVESTMENT EXCHANGES AND CLEARING HOUSES

- 15 (1) The rules and practices of the body, together with the law of the country in which the body's head office is situated, must be such as to provide adequate procedures for dealing with the default of persons party to market contracts connected with the body.
- (2) The reference in sub-paragraph (1) to default is to a person being unable to meet his obligations.