
STATUTORY INSTRUMENTS

1995 No. 2049

**The Financial Markets and Insolvency
(Money Market) Regulations 1995**

GENERAL

Citation and commencement

1. These Regulations may be cited as the Financial Markets and Insolvency (Money Market) 1995 Regulations and shall come into force on 15th August 1995.

Interpretation of the Regulations

2. In these Regulations—

“the Act” means the Companies Act 1989;

“the 1986 Act” means the Financial Services Act 1986⁽¹⁾;

“business day” has the same meaning as in section 167(3) of the Act;

“defaulter” means a person in respect of whom action has been taken by a listed person under his default rules, whether by declaring the person in respect of whom action has been taken to be a defaulter or otherwise;

“default rules” means the rules of a listed person which provide for the taking of action in the event of a person appearing to be unable, or likely to become unable, to meet his liabilities in respect of one or more money market contracts or related contracts;

“the list” means the list maintained by the Bank of England for the purposes of section 171 of the Act;

“listed person” means a person for the time being included in the list;

“money market charge” means a charge, whether fixed or floating, granted in favour of a listed person for the purpose of securing debts or liabilities arising in connection with the settlement of money market contracts or related contracts;

“money market contract” means a contract for the acquisition or disposal of currency of the United Kingdom or of any other country or territory, being a contract in relation to which a listed person provides settlement arrangements;

“Part VII” means Part VII of the Act;

“related contract” means a contract other than a money market contract effected by a listed person under his default rules for the purpose of enabling the settlement of a money market contract or another related contract;

“rules” means the rules made or conditions imposed by a listed person with respect to the provision by that person of settlement arrangements.

Interpretation of Part VII as applied by the regulations

3. References in the provisions of Part VII as they are applied by these Regulations—
- (a) to a defaulter shall be taken to be references to a defaulter within the meaning of these Regulations;
 - (b) to default proceedings shall be taken to be references to proceedings taken by a listed person under his default rules;
 - (c) to default rules shall be taken to be references to default rules within the meaning of these Regulations;
 - (d) to a market charge shall be taken to be references to a money market charge;
 - (e) to market contracts shall be taken to be references to money market contracts and related contracts;
 - (f) to a member of a recognised investment exchange or a recognised clearing house shall be taken to be references to a person using the settlement arrangements provided by a listed person;
 - (g) to a recognised investment exchange or a recognised clearing house shall be taken to be references to a listed person; and
 - (h) to rules shall be taken to be references to rules within the meaning of these Regulations.

EXTENSION OF PART VII TO MONEY MARKET CONTRACTS AND RELATED CONTRACTS

Extension of Part VII to money market contracts and related contracts

4. Subject to the provisions of regulation 5 of these Regulations, Part VII shall apply to money market contracts and to related contracts as it applies to contracts connected with a recognised investment exchange or a recognised clearing house.

5. In their application to money market contracts and related contracts, the provisions of Part VII shall apply as if references to designated non-members were omitted and as if references to property provided as margin or as cover for margin included references to any property provided to a listed person for the purposes of or in connection with the settlement of money market contracts or related contracts.

APPLICATION OF CERTAIN PROVISIONS OF THE 1986 ACT IN RELATION TO A LISTED PERSON

Application of certain provisions of the 1986 Act in relation to a listed person

6. In relation to a listed person, the provisions of the 1986 Act mentioned in regulations 7 to 18 of these Regulations shall apply with the exceptions, additions and adaptations specified in relation to those provisions.

Compliance orders

7. Section 12 of the 1986 Act (compliance orders) shall apply in relation to a listed person as if—
- (a) the circumstances specified in subsection (1) of that section as those in which an application may be made to the court were the following, that is to say that it appears to the Bank of England that the circumstances are such that it could take action to remove a person from the list in accordance with the arrangements made by it for that purpose;

- (b) functions under the section(2)were exercisable by the Bank of England and not by any other person;
- (c) the references to a recognised organisation were references to a listed person;
- (d) the references to subsection (3) of section 10 of the 1986 Act (grant and refusal of recognition) to any requirement of Schedule 2 to that Act and to any obligation to which a recognised organisation is subject by virtue of that Act were references to the matters mentioned in sub-paragraph (a) of this paragraph;
- (e) the reference in subsection (1) to the revocation of a recognition order under section 11 of the 1986 Act (revocation of recognition) were a reference to the removal of a person from the list; and
- (f) the power conferred on the court by subsection (2) were a power to direct the listed person concerned to take such steps as the court may direct for securing that he ceases to be eligible for removal from the list.

Powers of intervention

8. Section 64 of the 1986 Act (scope of powers of intervention) shall apply in relation to a listed person as if—

- (a) subsections (2) to (4) were omitted;
- (b) the exception in subsection (1) and the related reference in that subsection to an appointed representative were omitted;
- (c) the reference in subsection (1) to the powers conferred by Chapter VI of Part I of the 1986 Act was a reference to the powers conferred on the Bank of England by virtue of regulations 9 to 12 of these Regulations;
- (d) the circumstances mentioned in subsection (1) as those in which the relevant powers are exercisable were the following, that is to say that it appears to the Bank of England that the circumstances are such that it could take action to remove a person from the list in accordance with the arrangements made by it for that purpose; and
- (e) the first reference in subsection (1) to any authorised person was a reference to any listed person.

9. Section 65 of the 1986 Act (restriction of business) shall apply in relation to a listed person as if—

- (a) functions under that section(3)were exercisable by the Bank of England and not by any other person;
- (b) the reference to an authorised person was a reference to a listed person;
- (c) the references to investment business were references to the provision of settlement arrangements in relation to money market contracts; and
- (d) the reference to the United Kingdom was a reference to Great Britain.

10. Section 66 of the 1986 Act (restriction on dealing with assets) shall apply in relation to a listed person as if—

- (a) functions under that section(4)were exercisable by the Bank of England and not by any other person;

(2) The functions of the Secretary of State under section 12 of the Financial Services Act 1986 have been transferred to the Securities and Investments Board—see the Financial Services Act 1986 (Delegation) Order 1987 (S.I. 1987/942).

(3) The functions of the Secretary of State under section 65 of the Financial Services Act 1986 have been transferred to the Securities and Investments Board—see the Financial Services Act 1986 (Delegation) Order 1987 (S.I. 1987/942).

(4) The functions of the Secretary of State under section 66 of the Financial Services Act 1986 have been transferred to the Securities and Investments Board—see the Financial Services Act 1986 (Delegation) Order 1987 (S.I. 1987/942).

- (b) the references to an appointed representative were omitted;
- (c) the references to an authorised person were references to a listed person; and
- (d) the reference to the United Kingdom was a reference to Great Britain.

11. Section 68 of the 1986 Act (maintenance of assets in United Kingdom) shall apply in relation to a listed person as if—

- (a) functions under that section(5)were exercisable by the Bank of England and not by any other person;
- (b) the reference to an appointed representative was omitted;
- (c) the references to an authorised person were references to a listed person
- (d) the references to liabilities in respect of investment business were references to liabilities arising from the provision of settlement arrangements; and
- (e) the references to the United Kingdom were references to Great Britain.

12. Section 69 of the 1986 Act (rescission and variation) shall apply in relation to a listed person as if—

- (a) functions under that section(6)were exercisable by the Bank of England and not by any other person; and
- (b) the reference to a prohibition or requirement imposed under Chapter VI of Part I of the 1986 Act were a reference to a prohibition or requirement imposed under those provisions of that Chapter which apply in relation to a listed person by virtue of these Regulations.

13. Section 70 of the 1986 Act (notices) shall apply in relation to a listed person as if—

- (a) the reference to a prohibition or requirement imposed under Chapter VI of Part I of the 1986 Act were a reference to a prohibition or requirement imposed under those provisions of that Chapter which apply in relation to a listed person by virtue of these Regulations;
- (b) functions under that section(7)were exercisable by the Bank of England and not by any other person; and
- (c) subsection (5) was omitted.

14. Section 72 of the 1986 Act (winding up orders) shall apply in relation to a listed person as if—

- (a) the powers conferred on the court were exercisable only on the presentation of a petition by the Bank of England(8);
- (b) the references to an appointed representative were omitted;
- (c) references to an authorised person, to any person whose authorisation is suspended under section 28 of the 1986 Act or who is the subject of a direction under section 33(1)(b) of that Act were references to a listed person; and
- (d) the provisions of subsections (2)(d) and (3) to (5) were omitted.

15. Section 74 of the 1986 Act (administration orders) shall apply in relation to a listed person as if it enabled the Bank of England to present a petition under section 9 of the Insolvency Act

(5) The functions of the Secretary of State under section 68 of the Financial Services Act 1986 have been transferred to the Securities and Investments Board—see the Financial Services Act 1986 (Delegation) Order 1987 (S.I. 1987/942).

(6) The functions of the Secretary of State under section 69 of the Financial Services Act 1986 have been transferred to the Securities and Investments Board—see the Financial Services Act 1986 (Delegation) Order 1987 (S.I. 1987/942).

(7) The functions of the Secretary of State under section 70 of the Financial Services Act 1986 have been transferred to the Securities and Investments Board—see the Financial Services Act 1986 (Delegation) Order 1987 (S.I. 1987/942).

(8) The powers conferred by section 72 of the Financial Services Act 1986 are exercisable concurrently by the Secretary of State and the Securities and Investments Board—see the Financial Services Act 1986 (Delegation) Order 1987 (S.I. 1987/942).

1986(9)(applications for administration orders) in relation to a company to which section 8 of that Act applies which is a listed person.

16. Section 105 of the 1986 Act (investigation powers)(10)shall apply in relation to a listed person as if—

- (a) functions under that section(11)were exercisable by the Bank of England and not by any other person;
- (b) the circumstances mentioned in subsection (1) as those in which the powers under that section are exercisable were that it appeared to the Bank of England that there is good reason to exercise those powers for the purpose of investigating the affairs, or any aspect of the affairs, of any listed person so far as relevant to settlement arrangements provided by that person in relation to money market contracts or related contracts; and
- (c) subsections (2) and (9)(12)were omitted.

17. Section 106 of the 1986 Act (exercise of investigation powers by officer etc.)(13)shall apply in connection with the application, by regulation 16 of these Regulations, of section 105 of that Act in relation to a listed person as if—

- (a) the references to the powers conferred by section 105 were references to the powers conferred by that section as it applies by virtue of these Regulations;
- (b) functions under section 106 were functions of the Bank of England and not of any other person;
- (c) the references to any officer of a person exercising functions under the section were references to any officer of the Bank of England; and
- (d) the person to whom a report must be made by virtue of subsection (3) were the Bank of England.

18. Section 199 of the 1986 Act (powers of entry)(14)shall apply in connection with the application, by regulation 16 of these Regulations, of section 105 of that Act in relation to a listed person as if—

- (a) the circumstances mentioned in subsections (1) and (2) as those in which a justice of the peace may issue a warrant were that he is satisfied on information given on oath by or on behalf of the Bank of England, or by a person authorised to exercise powers under section 105 of the 1986 Act as that section applies by virtue of these Regulations, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under section 105 as it applies by virtue of these Regulations and which have not been produced in compliance with the requirement; and
- (b) subsection (7) was omitted.

(9) 1986 c. 45.

(10) Section 105 of the Financial Services Act 1986 has been amended by sections 73 and 212 of, and Schedule 24 to, the Companies Act 1989.

(11) The powers conferred by section 105 of the Financial Services Act 1986 are exercisable concurrently by the Secretary of State and the Securities and Investments Board—see the Financial Services Act 1986 (Delegation Order) 1987 (S.I. 1987/942).

(12) Section 106 of the Financial Services Act 1986 has been amended by section 73 of the Companies Act 1989.

(13) Section 199 of the Financial Services Act 1986 has been amended by section 76 of the Companies Act 1989 and by section 79 of, and Schedule 25 to, the Criminal Justice Act 1993 (c. 36).

(14) By virtue of section 168 of the Companies Act 1989, the functions of the Secretary of State under sections 157, 162, 166 and 167 of that Act in relation to recognised UK investment exchanges and recognised UK clearing houses have been transferred to the Securities and Investments Board.

APPLICATION OF PROVISIONS OF PART VII IN RELATION TO A LISTED PERSON

Application of provisions of Part VII of the Act in relation to a listed person

19.—(1) Subject to the following provisions of this Regulation, the provisions of Part VII shall apply in relation to a listed person.

(2) In their application, by virtue of paragraph (1) of this Regulation, in relation to a listed person—

- (a) sections 157 (change in default rules), 162 (duty to report on completion of default proceedings), 166 (powers to give directions) and 167 (application to determine whether default proceedings to be taken) of the Act shall apply as if functions under those sections were exercisable by the Bank of England and not by any other person⁽¹⁴⁾;
- (b) sections 184(3) and (4) (indemnity for certain acts) shall apply as if the functions mentioned in section 184(3) were the functions of a listed person so far as relating to, or to matters arising out of—
 - (i) his default rules; or
 - (ii) any obligation to which he is subject by virtue of Part VII as it is applied by these Regulations; and
- (c) section 184(5) shall apply as if the reference to paragraph 5 or 12 of Schedule 21 to the Act was a reference to paragraph 6 of the Schedule to these Regulations.

MONEY MARKET CHARGES

Money market charges

20. The general law of insolvency shall have effect in relation to a money market charge subject to the provisions of regulations 21 to 24 of these Regulations.

Administration orders, &c

21.—(1) The provisions of this regulation are subject to the provisions of regulations 22 to 24 below.

(2) The following provisions of the Insolvency Act 1986⁽¹⁵⁾ (which relate to administration orders and administrators) do not apply in relation to a money market charge—

- (a) sections 10(1)(b) and 11(3)(c) (restriction on enforcement of security while petition for administration order pending or order in force); and
- (b) section 15(1) and (2) (power of administrator to deal with charged property);

and section 11(2) of that Act (receiver to vacate office when so requested by administrator) does not apply to a receiver appointed under a money market charge.

(3) However, where a money market charge falls to be enforced after an administration order has been made or a petition for an administration order has been presented, and there exists another charge over some or all of the same property ranking in priority to or *pari passu* with the market charge, the court may, on the application of any person interested, order that there shall be taken after enforcement of the money market charge such steps as the court may direct for the purpose of

⁽¹⁴⁾ By virtue of section 168 of the Companies Act 1989, the functions of the Secretary of State under sections 157, 162, 166 and 167 of that Act in relation to recognised UK investment exchanges and recognised UK clearing houses have been transferred to the Securities and Investments Board.

⁽¹⁵⁾ 1986 c. 45.

ensuring that the chargee under the other charge is not prejudiced by the enforcement of the money market charge.

(4) The following provisions of the Insolvency Act 1986 (which relate to the powers of receivers) do not apply to a money market charge—

- (a) section 43 (power of administrative receiver to dispose of charged property); and
- (b) section 61 (power of receiver in Scotland to dispose of an interest in property).

(5) Sections 127 and 284 of the Insolvency Act 1986 (avoidance of property dispositions effected after the commencement of winding up or presentation of a bankruptcy petition), and section 32(8) of the Bankruptcy (Scotland) Act 1985(16)(effect of dealing with debtor relating to estate vested in permanent trustee), do not apply to a disposition of property as a result of which the property becomes subject to a money market charge or any transaction pursuant to which that disposition is made.

(6) However, if a person (other than the chargee under the money market charge) who is a party to a disposition mentioned in paragraph (5) above has notice at the time of the disposition that a petition has been presented for the winding up, bankruptcy or sequestration of the estate of the party making the disposition, the value of any profit to him arising from the disposition is recoverable by the relevant office-holder unless the court directs otherwise.

(7) Any sum recoverable by virtue of paragraph (6) above ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.

(8) In a case falling within paragraph (5) above (as a disposition of property as a result of which the property becomes subject to a money market charge) and section 164(3) of the Act as it has effect by virtue of these Regulations (as the provision of margin or other property in relation to money market contracts), section 164(4), as it has effect by virtue of these Regulations, applies with respect to the recovery of the amount or value of the margin or other property and paragraph (6) above does not apply.

Limitations on extent to which charge to be treated as money market charge

22.—(1) Where a money market charge is granted partly for purposes other than securing debts or liabilities arising in connection with the settlement of money market contracts or related contracts, the provisions of these Regulations apply in relation to it only in so far as it has effect for the purpose of securing such debts and liabilities.

(2) The provisions of these Regulations shall not have effect in relation to any money market charge, whether fixed or floating, to the extent that it is a charge on land or any interest in land.

(3) For the purposes of paragraph (2) above, a charge on a debenture forming part of a series shall not be treated as a charge on land or any interest in land by reason of the fact that the debenture is itself secured by a charge on land or any interest in land.

(4) The provisions of these Regulations shall apply to a money market charge only to the extent that—

- (a) it is a charge over property provided, whether as margin or otherwise, by a person to a listed person for the purposes of or in connection with the settlement of money market contracts or related contracts; and
- (b) either—
 - (i) it secures the obligation to pay to that listed person the net sum referred to in paragraph 2(2)(a) of the Schedule to these Regulations; or

- (ii) its enforcement is, by reason of the inadequacy of other property provided to that listed person, whether as margin or otherwise, necessary to enable that listed person to settle money market contracts or related contracts.

Limitation of disapplication of sections 10(1)(b) and 11(3)(c) of Insolvency Act 1986 in relation to certain charges

23. The disapplication of sections 10(1)(b) and 11(3)(c) of the Insolvency Act 1986 by section 175(1)(a) of the Act as it applies by virtue of these Regulations shall be limited in respect of a charge falling within sub-paragraphs (a) and (b)(ii) of regulation 22(4) of these Regulations so that it has effect only to the extent necessary for there to be realised a sum equal to the total amount necessary to enable the listed person to settle money market contracts and related contracts effected before the end of the tenth business day after the day on which an administration order is made pursuant to the petition.

Ability of administrator or receiver to recover assets in case of property subject to certain charges

24.—(1) The disapplication of sections 15(1) and (2), 43 and 61 of the Insolvency Act 1986 by section 175(1)(b) and 175(3) of the Act as they apply by virtue of these Regulations shall cease to have effect in relation to a charge of the kind mentioned in regulation 23 of these Regulations after the end of the tenth business day after the day on which an administration order is made or, as the case may be, an administrative receiver or a receiver is appointed in relation to the grantor of the charge so far as the charge has effect in relation to property which is not, on the basis of a valuation conducted in accordance with paragraph (2) of this Regulation, required for the realisation of the sum referred to in regulation 23 of these Regulations.

(2) For the purpose of paragraph (1) of this Regulation, the value of any property shall be the value agreed between whichever is relevant of the administrator, administrative receiver or receiver on the one hand and the listed person on the other.

MONEY MARKET PROPERTY

Money market property

25.—(1) Section 177 of the Act (application of margin not affected by certain other interests) shall apply to any description of property provided as cover for margin and to any description of property otherwise provided by a person to a listed person for the purposes of or in connection with the settlement of money market contracts or related contracts.

(2) Section 179 of the Act (priority of market charge over unpaid vendor's lien) shall apply to property subject to an unpaid vendor's lien which becomes subject to a money market charge.

(3) Section 180 of the Act (proceedings against market property by unsecured creditors) shall apply to any description of property provided as cover for margin, to any description of property otherwise provided by a person to a listed person for the purposes of or in connection with the settlement of money market contracts or related contracts and to property which is subject to a money market charge.

SUPPLEMENTARY

Construction of references to parties to money market contracts or related contracts

26.—(1) Where a person enters into money market contracts or related contracts in more than one capacity, the provisions of Part VII as it is applied by these Regulations shall apply as if the contracts entered into in each different capacity were entered into by different persons.

(2) References in Part VII as it is applied by these Regulations to a market contract or a related contract to which a person is party include (unless the context otherwise requires) contracts to which he is party as agent.

Requirements as to listing

27.—(1) The Bank of England shall not admit a person to the list unless it is satisfied that the person in question has rules and arrangements meeting the requirements of the Schedule to these Regulations.

(2) The Bank of England shall not admit a person to the list unless it is satisfied that the person in question is able and willing to co-operate, by the sharing of information or otherwise, with the Treasury, the Secretary of State, the Bank itself, 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 person party to a money market contract or the insolvency of a person party to a related contract.

(3) The arrangements made by the Bank of England for a person's removal from the list must enable the Bank to remove a person if the Bank is satisfied that the rules and arrangements of that person do not meet the requirements of the Schedule to these Regulations.

Application of Part VII following removal from the list

28. Section 169(3) of the Act shall apply as if—

- (a) functions under that provision were exercisable by the Bank of England and not by any other person; and
- (b) the reference to the revocation of recognition of an investment exchange or clearing house under the 1986 Act and the references to a revocation order were each a reference to the removal of a person from the list.

Exemption from liability for damages

29.—(1) Neither the Bank of England nor any person who is a member of its Court of Directors or who is, or is acting as, an officer or servant of the Bank of England shall be liable in damages for anything done or omitted in the discharge or purported discharge of the functions of which this regulation applies unless it is shown that the act or omission was in bad faith.

(2) The functions to which this regulation applies are the functions of the Bank of England—

- (a) in relation to listed persons and the maintenance of the list;
- (b) under Part VII as it is applied by these Regulations;
- (c) under the provisions of the 1986 Act applied by regulations 7 to 18 of these Regulations; and
- (d) under these Regulations.

Territorial extent

30. None of the provisions of these Regulations and none of the provisions of Part VII as they are applied by the provisions of these Regulations extends to Northern Ireland.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

1st August 1995

Bowen Wells
David Willetts
Two of the Lord's Commissioners of Her
Majesty's Treasury

4th August 1995

Phillip Oppenheim
Parliamentary Under Secretary of State,
Department of Trade and Industry