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STATUTORY INSTRUMENTS

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**1998 No. 1748**

**FINANCIAL SERVICES**

**The Financial Markets and Insolvency Regulations 1998**

<i>Made</i>	- - - -	<i>18th July 1998</i>
<i>Laid before Parliament</i>		<i>20th July 1998</i>
<i>Coming into force</i>	- -	<i>11th August 1998</i>

The Treasury in exercise of the powers vested in them under section 155 of the Companies Act 1989(1) and the Treasury and the Secretary of State, in the exercise of the powers vested in them jointly under sections 185 and 186 of that Act and of all other powers enabling them in that behalf hereby make the following Regulations—

**Citation and commencement**

1. These Regulations may be cited as the Financial Markets and Insolvency Regulations 1998 and shall come into force on 11th August 1998.

**Interpretation of the Regulations**

2. In these Regulations “the Act” means the Companies Act 1989.

**Definition of market contracts**

3. Section 155(2)(2) of the Act shall be amended as follows—

(a) In subsection (2)(a) the words “with a person other than the exchange” shall be inserted after the word “exchange” where it first appears.

(b) Subsection (2)(b) shall be replaced by the following—

“(b) contracts entered into by the exchange with its members for the purpose of enabling the rights and liabilities of that member under transactions in investments to be settled.”

4. Section 155(3) shall be replaced by the following—

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(1) 1989 c. 40. The powers originally vested in the Secretary of State under section 155 are now vested in the Treasury and the powers under section 185 and 186 of the Companies Act 1989 are now exercisable by him jointly with the Treasury—see the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315).

(2) Section 155(2) was substituted by regulation 3 of the Financial Markets and Insolvency Regulations 1991 (S.I. 1991/880).

“(3) In relation to a recognised clearing house, this Part applies to contracts entered into by the clearing house with a member of the clearing house for the purpose of enabling the rights and liabilities of that member under transactions in investments to be settled.”

**Amendments to Schedule 21 to the Act**

5.—(1) In paragraph 1(4) of Schedule 21 to the Act, the words “entered into by the exchange for the purposes of or in connection with the provision of its own clearing services” shall be replaced by the words “falling within section 155(2)(b) above”.

(2) In paragraph 1(5) of Schedule 21 to the Act, the words “other contracts” shall be replaced by the words “contracts falling within section 155(2)(a) above”.

6. Paragraph 7 of Schedule 21 to the Act shall be replaced by the following—

“(7) Where the exchange provides clearing services, paragraph 14 below applies in respect of any margined transactions effected by or on behalf of the exchange as it applies in relation to a clearing house.”

14th July 1998

*Graham Allen*  
*Bob Ainsworth*  
Two of the Lord’s Commissioners of Her  
Majesty’s Treasury

18th July 1998

*Nigel Griffiths*  
Parliamentary Under Secretary of State for  
Competition and Consumer Affairs,  
Department of Trade and Industry

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## EXPLANATORY NOTE

*(This note is not part of the Regulation)*

The Regulations apply the provisions of Part VII of the Companies Act 1989 (“the 1989 Act”) to certain contracts entered into by investment exchanges and clearing houses recognised in accordance with the provisions of the Financial Services Act 1986 (c. 60). The contracts concerned are those entered into by an exchange or clearing house with its members for the purpose of settling transactions in investments entered into by the member otherwise than on a recognised investment exchange.

Regulation 3 amends the definition of “market contracts” in relation to a recognised investment exchange currently set out in section 155(2) of the 1989 Act by amending subsection (2)(b) so that it covers any contract entered into by the exchange with its member for the purpose of settling the member’s transactions in investments, whether or not the transaction was effected on the exchange. Subsection (2)(a) is also amended to make clear that it applies only to contracts entered into by the member of the exchange with a third party.

Regulation 4 amends the definition of “market contracts” in relation to a recognised clearing house currently set out in section 155(3) so that it includes contracts entered into by the clearing house with a member for the purpose of settling the member’s transactions in investments whether or not that transaction was effected on a recognised investment exchange with which the clearing house had a clearing arrangement.

Regulations 5 and 6 make amendments to Schedule 21 to the 1989 Act to take account of the fact that the default rules referred to in that Schedule now include default rules relating to off exchange contracts because the amended definition of “market contracts” affects the definition of the term “default rules” in section 188 of the 1989 Act. Schedule 21 sets out additional recognition criteria which, by virtue of section 156 of the 1989 Act, supplement the criteria set for investment exchanges and clearing houses in the relevant provisions of the Financial Services Act 1986.