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STATUTORY INSTRUMENTS

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**1999 No. 2979**

**FINANCIAL SERVICES**

**The Financial Markets and Insolvency  
(Settlement Finality) Regulations 1999**

*Made* - - - - *2nd November 1999*  
*Laid before Parliament* *3rd November 1999*  
*Coming into force* - - *11th December 1999*

The Treasury, being a government department designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures—

- (i) relating to investment firms and to the provision of investment services and to the operation of regulated markets and clearing or settlement systems;
- (ii) relating to payment systems; and
- (ii) relating to collateral security provided to the central banks of member States or to the European Central Bank;

in exercise of the powers conferred by that section, hereby make the following Regulations—

**PART I**  
**GENERAL**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 and shall come into force on 11th December 1999.

(2) These Regulations do not extend to Northern Ireland.

**Interpretation**

2.—(1) In these Regulations—

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(1) S.I.1993/2661 and S.I. 1998/2793.  
(2) 1972 c. 68; by virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

“the 1986 Act” means the Financial Services Act 1986<sup>(3)</sup>;

“central bank” means a central bank of an EEA State or the European Central Bank;

“central counterparty” means a body corporate or unincorporated association interposed between the institutions in a designated system and which acts as the exclusive counterparty of those institutions with regard to transfer orders;

“charge” means any form of security, including a mortgage and, in Scotland, a heritable security;

“clearing house” means a body corporate or unincorporated association which is responsible for the calculation of the net positions of institutions and any central counterparty or settlement agent in a designated system;

“collateral security” means any realisable assets provided under a charge or a repurchase or similar agreement, or otherwise (including money provided under a charge)—

- (a) for the purpose of securing rights and obligations potentially arising in connection with a designated system (“collateral security in connection with participation in a designated system”); or
- (b) to a central bank for the purpose of securing rights and obligations in connection with its operations in carrying out its functions as a central bank (“collateral security in connection with the functions of a central bank”);

“collateral security charge” means, where collateral security consists of realisable assets (including money) provided under a charge, that charge;

“credit institution” means a credit institution as defined in the first indent of Article 1 of Council Directive 77/780/EEC<sup>(4)</sup> including the bodies set out in the list in Article 2(2);

“creditors' voluntary winding-up resolution” means a resolution for voluntary winding up (within the meaning of the Insolvency Act 1986<sup>(5)</sup>) where the winding up is a creditors' winding up (within the meaning of that Act);

“default arrangements” means the arrangements put in place by a designated system to limit systemic and other types of risk which arise in the event of a participant appearing to be unable, or likely to become unable, to meet its obligations in respect of a transfer order, including, for example, any default rules within the meaning of Part VII or any other arrangements for—

- (a) netting,
- (b) the closing out of open positions, or
- (c) the application or transfer of collateral security;

“defaulter” means a person in respect of whom action has been taken by a designated system under its default arrangements;

“designated system” means a system which is declared by a designation order for the time being in force to be a designated system for the purposes of these Regulations;

“designating authority” means—

- (a) in the case of a system—
  - (i) which is, or the operator of which is, a recognised investment exchange or a recognised clearing house for the purposes of the 1986 Act,

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(3) 1986 c. 60.

(4) O.J. No. L322, 17.12.77, p. 30, as amended by Council Directive 85/345/EEC (O.J. No. L183, 16.7.85, p. 19), Council Directive 89/646/EEC (O.J. No. L386, 30.12.89, p. 1), European Parliament and Council Directive 95/26/EC (O.J. No. L168, 18.7.95, p. 7), Council Directive 96/13/EC (O.J. No. L66, 16.3.96, p. 15) and European Parliament and Council Directive 98/33/EC (O.J. No. L204, 21.7.98, p. 29).

(5) 1986 c. 45.

- (ii) which is, or the operator of which is, a listed person within the meaning of the Financial Markets and Insolvency (Money Market) Regulations 1995(6), or
- (iii) through which securities transfer orders are effected (whether or not payment transfer orders are also effected through that system),

the Financial Services Authority;

- (b) in any other case, the Bank of England;

“designation order” has the meaning given by regulation 4;

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(7) as adjusted by the Protocol signed at Brussels on 17th March 1993(8);

“guidance”, in relation to a designated system, means guidance issued or any recommendation made by it which is intended to have continuing effect and is issued in writing or other legible form to all or any class of its participants or users or persons seeking to participate in the system or to use its facilities and which would, if it were a rule, come within the definition of a rule;

“indirect participant” means a credit institution for which payment transfer orders are capable of being effected through a designated system pursuant to its contractual relationship with an institution;

“institution” means—

- (a) a credit institution;
- (b) an investment firm as defined in point 2 of Article 1 of Council Directive 93/22/EEC(9) excluding the bodies set out in the list in Article 2(2)(a) to (k);
- (c) a public authority or publicly guaranteed undertaking;
- (d) any undertaking whose head office is outside the European Community and whose functions correspond to those of a credit institution or investment firm as defined in (a) and (b) above; or
- (e) any undertaking which is treated by the designating authority as an institution in accordance with regulation 8(1),

which participates in a designated system and which is responsible for discharging the financial obligations arising from transfer orders which are effected through the system;

“netting” means the conversion into one net claim or obligation of different claims or obligations between participants resulting from the issue and receipt of transfer orders between them, whether on a bilateral or multilateral basis and whether through the interposition of a clearing house, central counterparty or settlement agent or otherwise;

“Part VII” means Part VII of the Companies Act 1989(10);

“participant” means—

- (a) an institution,
- (b) a body corporate or unincorporated association which carries out any combination of the functions of a central counterparty, a settlement agent or a clearing house, with respect to a system, or

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(6) S.I. 1995/2049.

(7) Cm 2073.

(8) Cm 2183.

(9) O.J. No. L141, 11.6.93, p. 27, as amended by European Parliament and Council Directive 95/26/EC (O.J. No. L168, 18.7.95, p. 7) and European Parliament and Council Directive 97/9/EC (O.J. No. L84, 26.3.97, p. 22).

(10) 1989 c. 40.

(c) an indirect participant which is treated as a participant, or is a member of a class of indirect participants which are treated as participants, in accordance with regulation 9; “protected trust deed” and “trust deed” shall be construed in accordance with section 73(1) of the Bankruptcy (Scotland) Act 1985<sup>(11)</sup> (interpretation);

“relevant office-holder” means—

- (a) the official receiver;
- (b) any person acting in relation to a company as its liquidator, provisional liquidator, or administrator;
- (c) any person acting in relation to an individual (or, in Scotland, any debtor within the meaning of the Bankruptcy (Scotland) Act 1985) as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate or as his trustee under a protected trust deed; or
- (d) any person acting as administrator of an insolvent estate of a deceased person;

and in sub-paragraph (b), “company” means any company, society, association, partnership or other body which may be wound up under the Insolvency Act 1986;

“rules”, in relation to a designated system, means rules or conditions governing the system with respect to the matters dealt with in these Regulations;

“securities” means (except for the purposes of the definition of “charge”) any instruments referred to in section B of the Annex to Council Directive [93/22/EEC](#);

“settlement account” means an account at a central bank, a settlement agent or a central counterparty used to hold funds or securities (or both) and to settle transactions between participants in a designated system;

“settlement agent” means a body corporate or unincorporated association providing settlement accounts to the institutions and any central counterparty in a designated system for the settlement of transfer orders within the system and, as the case may be, for extending credit to such institutions and any such central counterparty for settlement purposes;

“the Settlement Finality Directive” means Directive [98/26/EC](#) of the European Parliament and of the Council of 19th May 1998 on settlement finality in payment and securities settlement systems <sup>(12)</sup>;

“transfer order” means—

- (a) an instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a credit institution, a central bank or a settlement agent, or an instruction which results in the assumption or discharge of a payment obligation as defined by the rules of a designated system (“a payment transfer order”); or
- (b) an instruction by a participant to transfer the title to, or interest in, securities by means of a book entry on a register, or otherwise (“a securities transfer order”);

“winding up” means—

- (a) winding up by the court, or
- (b) creditors' voluntary winding up,

within the meaning of the Insolvency Act 1986 (but does not include members' voluntary winding up within the meaning of that Act).

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<sup>(11)</sup> 1985 c. 66; the definition of “trust deed” was substituted by paragraph 29(6) of Schedule 1 to the Bankruptcy (Scotland) Act 1993 (c. 6).

<sup>(12)</sup> O.J. No. L166, 11.6.98, p. 45.

(2) In these Regulations—

- (a) references to the law of insolvency include references to every provision made by or under the Insolvency Act 1986 or the Bankruptcy (Scotland) Act 1985; and in relation to a building society references to insolvency law or to any provision of the Insolvency Act 1986 are to that law or provision as modified by the Building Societies Act 1986(13);
- (b) in relation to Scotland, references to—
  - (i) sequestration include references to the administration by a judicial factor of the insolvent estate of a deceased person,
  - (ii) an interim or permanent trustee include references to a judicial factor on the insolvent estate of a deceased person, and
  - (iii) “set off” include compensation.

(3) Subject to paragraph (1), expressions used in these Regulations which are also used in the Settlement Finality Directive have the same meaning in these Regulations as they have in the Settlement Finality Directive.

(4) References in these Regulations to things done, or required to be done, by or in relation to a designated system shall, in the case of a designated system which is neither a body corporate nor an unincorporated association, be treated as references to things done, or required to be done, by or in relation to the operator of that system.

## PART II

### DESIGNATED SYSTEMS

#### **Application for designation**

3.—(1) Any body corporate or unincorporated association may apply to the designating authority for an order declaring it, or any system of which it is the operator, to be a designated system for the purposes of these Regulations.

(2) Any such application—

- (a) shall be made in such manner as the designating authority may direct; and
- (b) shall be accompanied by such information as the designating authority may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it, the designating authority may require the applicant to furnish additional information.

(4) The directions and requirements given or imposed under paragraphs (2) and (3) may differ as between different applications.

(5) Any information to be furnished to the designating authority under this regulation shall be in such form or verified in such manner as it may specify.

(6) Every application shall be accompanied by copies of the rules of the system to which the application relates and any guidance relating to that system.

#### **Grant and refusal of designation**

4.—(1) Where—

- (a) an application has been duly made under regulation 3;

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(13) 1986 c. 53.

- (b) the applicant has paid any fee charged by virtue of regulation 5(1); and
- (c) the designating authority is satisfied that the requirements of the Schedule are satisfied with respect to the system to which the application relates;

the designating authority may make an order (a “designation order”) declaring the system to be a designated system for the purposes of these Regulations.

(2) In determining whether to make a designation order, the designating authority shall have regard to systemic risks.

(3) Where an application has been made to the Financial Services Authority under regulation 3 in relation to a system through which both securities transfer orders and payment transfer orders are effected, the Authority shall consult the Bank of England before deciding whether to make a designation order.

(4) A designation order shall state the date on which it takes effect.

(5) Where the designating authority refuses an application for a designation order it shall give the applicant a written notice to that effect stating the reasons for the refusal.

### **Fees**

5.—(1) The designating authority may charge a fee to an applicant for a designation order.

(2) The designating authority may charge a designated system a periodical fee.

(3) Fees chargeable by the designating authority under this regulation shall not exceed an amount which reasonably represents the amount of costs incurred or likely to be incurred—

- (a) in the case of a fee charged to an applicant for a designation order, in determining whether the designation order should be made; and
- (b) in the case of a periodical fee, in satisfying itself that the designated system continues to meet the requirements of the Schedule and is complying with any obligations to which it is subject by virtue of these Regulations.

### **Certain bodies deemed to satisfy requirements for designation**

6.—(1) Subject to paragraph (2), an investment exchange or clearing house declared by an order for the time being in force to be a recognised investment exchange or recognised clearing house for the purposes of the 1986 Act, whether that order was made before or is made after the coming into force of these Regulations, shall be deemed to satisfy the requirements in paragraphs 2 and 3 of the Schedule.

(2) Paragraph (1) does not apply to overseas investment exchanges or overseas clearing houses within the meaning of the 1986 Act.

### **Revocation of designation**

7.—(1) A designation order may be revoked by a further order made by the designating authority if at any time it appears to the designating authority—

- (a) that any requirement of the Schedule is not satisfied in the case of the system to which the designation order relates; or
- (b) that the system has failed to comply with any obligation to which it is subject by virtue of these Regulations.

(2) Subsections (2) to (9) of section 11 of the 1986 Act shall apply in relation to the revocation of a designation order under paragraph (1) as they apply in relation to the revocation of a recognition order under subsection (1) of that section; and in those subsections as they so apply—

- (a) any reference to a recognised organisation shall be taken to be a reference to a designated system; and
- (b) any reference to members of a recognised organisation shall be taken to be a reference to participants in a designated system.

### **Undertakings treated as institutions**

**8.—(1)** A designating authority may treat as an institution any undertaking which participates in a designated system and which is responsible for discharging financial obligations arising from transfer orders effected through that system, provided that—

- (a) the designating authority considers such treatment to be required on grounds of systemic risk, and
- (b) the designated system is one in which at least three institutions (other than any undertaking treated as an institution by virtue of this paragraph) participate and through which securities transfer orders are effected.

(2) Where a designating authority decides to treat an undertaking as an institution in accordance with paragraph (1), it shall give written notice of that decision to the designated system in which the undertaking is to be treated as a participant.

### **Indirect participants treated as participants**

**9.—(1)** A designating authority may treat—

- (a) an indirect participant as a participant in a designated system, or
- (b) a class of indirect participants as participants in a designated system,

where it considers this to be required on grounds of systemic risk, and shall give written notice of any decision to that effect to the designated system.

### **Provision of information by designated systems**

**10.—(1)** A designated system shall, on being declared to be a designated system, provide to the designating authority in writing a list of its participants and shall give written notice to the designating authority of any amendment to the list within seven days of such amendment.

(2) The designating authority may, in writing, require a designated system to furnish to it such other information relating to that designated system as it reasonably requires for the exercise of its functions under these Regulations, within such time, in such form, at such intervals and verified in such manner as the designating authority may specify.

(3) When a designated system amends, revokes or adds to its rules or its guidance, it shall within fourteen days give written notice to the designating authority of the amendment, revocation or addition.

(4) A designated system shall give the designating authority at least fourteen days' written notice of any proposal to amend, revoke or add to its default arrangements.

(5) Nothing in this regulation shall require a designated system to give any notice or furnish any information to the Financial Services Authority which it has given or furnished to the Authority pursuant to any requirement imposed by or under section 41 of the 1986 Act (notification requirements) or any other enactment.

### **Exemption from liability in damages**

**11.—(1)** Neither the designating authority nor any person who is, or is acting as, a member, officer or member of staff of the designating authority shall be liable in damages for anything done

or omitted in the discharge, or purported discharge, of the designating authority's functions under these Regulations.

- (2) Paragraph (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith; or
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998(14) (acts of public authorities).

#### **Publication of information and advice**

**12.** A designating authority may publish information or give advice, or arrange for the publication of information or the giving of advice, in such form and manner as it considers appropriate with respect to any matter dealt with in these Regulations.

### **PART III**

#### **TRANSFER ORDERS EFFECTED THROUGH A DESIGNATED SYSTEM AND COLLATERAL SECURITY**

#### **Modifications of the law of insolvency**

- 13.—**(1) The general law of insolvency has effect in relation to—
- (a) transfer orders effected through a designated system and action taken under the rules of a designated system with respect to such orders; and
  - (b) collateral security,

subject to the provisions of this Part.

- (2) Those provisions apply in relation to—
- (a) insolvency proceedings in respect of a participant in a designated system; and
  - (b) insolvency proceedings in respect of a provider of collateral security in connection with the functions of a central bank, in so far as the proceedings affect the rights of the central bank to the collateral security;

but not in relation to any other insolvency proceedings, notwithstanding that rights or liabilities arising from transfer orders or collateral security fall to be dealt with in the proceedings.

- (3) Subject to regulation 21, nothing in this Part shall have the effect of disapplying Part VII.

#### **Proceedings of designated system take precedence over insolvency proceedings**

**14.—**(1) None of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to the distribution of the assets of a person on bankruptcy, winding up, sequestration or under a protected trust deed, or in the administration of an insolvent estate—

- (a) a transfer order;
- (b) the default arrangements of a designated system;
- (c) the rules of a designated system as to the settlement of transfer orders not dealt with under its default arrangements;



- (d) a contract for the purpose of realising collateral security in connection with participation in a designated system otherwise than pursuant to its default arrangements; or
- (e) a contract for the purpose of realising collateral security in connection with the functions of a central bank.

(2) The powers of a relevant office-holder in his capacity as such, and the powers of the court under the Insolvency Act 1986<sup>(15)</sup> or the Bankruptcy (Scotland) Act 1985<sup>(16)</sup>, shall not be exercised in such a way as to prevent or interfere with—

- (a) the settlement in accordance with the rules of a designated system of a transfer order not dealt with under its default arrangements;
- (b) any action taken under its default arrangements;
- (c) any action taken to realise collateral security in connection with participation in a designated system otherwise than pursuant to its default arrangements; or
- (d) any action taken to realise collateral security in connection with the functions of a central bank.

This does not prevent the court from afterwards making any such order or decree as is mentioned in regulation 17(1) or (2).

(3) Nothing in the following provisions of this Part shall be construed as affecting the generality of the above provisions.

(4) A debt or other liability arising out of a transfer order which is the subject of action taken under default arrangements may not be proved in a winding up or bankruptcy, or in Scotland claimed in a winding up, sequestration or under a protected trust deed, until the completion of the action taken under default arrangements.

A debt or other liability which by virtue of this paragraph may not be proved or claimed shall not be taken into account for the purposes of any set-off until the completion of the action taken under default arrangements.

(5) Paragraph (1) has the effect that the following provisions (which relate to preferential debts and the payment of expenses etc) apply subject to paragraph (6), namely—

- (a) in the case of collateral security provided by a company (within the meaning of section 735 of the Companies Act 1985<sup>(17)</sup>)—
  - (i) section 175 of the Insolvency Act 1986, and
  - (ii) where the company is one in relation to which an administration order is made, section 19(4) of the Insolvency Act 1986, section 40 (or, in Scotland, section 59 and 60(1)(e)) of that Act, and section 196 of the Companies Act 1985; and
- (b) in the case of collateral security provided by an individual, section 328(1 and (2) of the Insolvency Act 1986 or, in Scotland, in the case of collateral security provided by an individual or a partnership, section 51 of the Bankruptcy (Scotland) Act 1985 and any like provision or rule of law affecting a protected trust deed.

(6) The claim of a participant or central bank to collateral security shall be paid in priority to—

- (a) the expenses of the winding up mentioned in sections 115 and 156 of the Insolvency Act 1986, the expenses of the bankruptcy within the meaning of that Act or, as the case may be, the remuneration and expenses of the administrator mentioned in section 19(4) of that Act, and

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<sup>(15)</sup> 1986 c. 45.

<sup>(16)</sup> 1985 c. 66.

<sup>(17)</sup> 1985 c. 6.

- (b) the preferential debts of the company or the individual (as the case may be) within the meaning given by section 386 of that Act,

unless the terms on which the collateral security was provided expressly provide that such expenses, remuneration or preferential debts are to have priority.

(7) As respects Scotland—

- (a) the reference in paragraph (6)(a) to the expenses of bankruptcy shall be taken to be a reference to the matters mentioned in paragraphs (a) to (d) of section 51(1) of the Bankruptcy (Scotland) Act 1985, or any like provision or rule of law affecting a protected trust deed; and
- (b) the reference in paragraph (6)(b) to the preferential debts of the individual shall be taken to be a reference to the preferred debts of the debtor within the meaning of the Bankruptcy (Scotland) Act 1985, or any like definition applying with respect to a protected trust deed by virtue of any provision or rule of law affecting it.

### **Net sum payable on completion of action taken under default arrangements**

**15.**—(1) The following provisions apply with respect to any sum which is owed on completion of action taken under default arrangements by or to a defaulter but do not apply to any sum which (or to the extent that it) arises from a transfer order which is also a market contract within the meaning of Part VII, in which case sections 162 and 163 of the Companies Act 1989<sup>(18)</sup> apply subject to the modification made by regulation 21.

(2) If, in England and Wales, a bankruptcy or winding-up order has been made or a creditors' voluntary winding-up resolution has been passed, the debt—

- (a) is provable in the bankruptcy or winding up or, as the case may be, is payable to the relevant office-holder; and
- (b) shall be taken into account, where appropriate, under section 323 of the Insolvency Act 1986 (mutual dealings and set-off) or the corresponding provision applicable in the case of winding up;

in the same way as a debt due before the commencement of bankruptcy, the date on which the body corporate goes into liquidation (within the meaning of section 247 of the Insolvency Act 1986) or, in the case of a partnership, the date of the winding-up order.

(3) If, in Scotland, an award of sequestration or a winding-up order has been made, or a creditors' voluntary winding-up resolution has been passed, or a trust deed has been granted and it has become a protected trust deed, the debt—

- (a) may be claimed in the sequestration or winding up or under the protected trust deed or, as the case may be, is payable to the relevant office-holder; and
- (b) shall be taken into account for the purposes of any rule of law relating to set-off applicable in sequestration, winding up or in respect of a protected trust deed;

in the same way as a debt due before the date of sequestration (within the meaning of section 73(1) of the Bankruptcy (Scotland) Act 1985) or the commencement of the winding up (within the meaning of section 129 of the Insolvency Act 1986) or the grant of the trust deed.

### **Disclaimer of property, rescission of contracts, &c**

**16.**—(1) Sections 178, 186, 315 and 345 of the Insolvency Act 1986 (power to disclaim onerous property and court's power to order rescission of contracts, &c) do not apply in relation to—

- (a) a transfer order; or

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(18) 1989 c. 40.

(b) a contract for the purpose of realising collateral security.

In the application of this paragraph in Scotland, the reference to sections 178, 315 and 345 shall be construed as a reference to any rule of law having the like effect as those sections.

(2) In Scotland, a permanent trustee on the sequestrated estate of a defaulter or a liquidator or a trustee under a protected trust deed granted by a defaulter is bound by any transfer order given by that defaulter and by any such contract as is mentioned in paragraph (1)(b) notwithstanding section 42 of the Bankruptcy (Scotland) Act 1985 or any rule of law having the like effect applying in liquidations or any like provision or rule of law affecting the protected trust deed.

(3) Sections 127 and 284 of the Insolvency Act 1986 (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition), section 32(8) of the Bankruptcy (Scotland) Act 1985 (effect of dealing with debtor relating to estate vested in permanent trustee) and any like provision or rule of law affecting a protected trust deed, do not apply to—

- (a) a transfer order, or any disposition of property in pursuance of such an order;
- (b) the provision of collateral security;
- (c) a contract for the purpose of realising collateral security or any disposition of property in pursuance of such a contract; or
- (d) any disposition of property in accordance with the rules of a designated system as to the application of collateral security.

#### **Adjustment of prior transactions**

**17.**—(1) No order shall be made in relation to a transaction to which this regulation applies under—

- (a) section 238 or 339 of the Insolvency Act 1986 (transactions at an undervalue);
- (b) section 239 or 340 of that Act (preferences); or
- (c) section 423 of that Act (transactions defrauding creditors).

(2) As respects Scotland, no decree shall be granted in relation to any such transaction—

- (a) under section 34 or 36 of the Bankruptcy (Scotland) Act 1985 or section 242 or 243 of the Insolvency Act 1986 (gratuitous alienations and unfair preferences); or
- (b) at common law on grounds of gratuitous alienations or fraudulent preferences.

(3) This regulation applies to—

- (a) a transfer order, or any disposition of property in pursuance of such an order;
- (b) the provision of collateral security;
- (c) a contract for the purpose of realising collateral security or any disposition of property in pursuance of such a contract; or
- (d) any disposition of property in accordance with the rules of a designated system as to the application of collateral security.

#### *Collateral security charges*

#### **Modifications of the law of insolvency**

**18.** The general law of insolvency has effect in relation to a collateral security charge and the action taken to enforce such a charge, subject to the provisions of regulation 19.

### **Administration orders, &c**

**19.**—(1) The following provisions of the Insolvency Act 1986 (which relate to administration orders and administrators) do not apply in relation to a collateral security 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 required by administrator) does not apply to a receiver appointed under such a charge.

(2) However, where a collateral security 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 collateral security charge, on the application of any person interested, the court may order that there shall be taken after enforcement of the collateral security charge such steps as the court may direct for the purpose of ensuring that the chargee under the other charge is not prejudiced by the enforcement of the collateral security charge.

(3) Sections 127 and 284 of the Insolvency Act 1986<sup>(19)</sup> (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition), section 32(8) of the Bankruptcy (Scotland) Act 1985<sup>(20)</sup> (effect of dealing with debtor relating to estate vested in permanent trustee) and any like provision or rule of law affecting a protected trust deed, do not apply to a disposition of property as a result of which the property becomes subject to a collateral security charge or any transactions pursuant to which that disposition is made.

### *General*

#### **Transfer order entered into designated system following insolvency**

**20.**—(1) This Part does not apply in relation to any transfer order given by a participant which is entered into a designated system after—

- (a) a court has made an order of a type referred to in regulation 22 in respect of that participant, or
- (b) that participant has passed a creditors' voluntary winding-up resolution, or
- (c) a trust deed granted by that participant has become a protected trust deed,

unless the conditions mentioned in paragraph (2) are satisfied.

(2) The conditions referred to in paragraph (1) are that—

- (a) the transfer order is carried out on the same day that the event specified in paragraph (1) (a), (b) or (c) occurs, and
- (b) the settlement agent, the central counterparty or the clearing house can show that it did not have notice of that event at the time of settlement of the transfer order.

(3) For the purposes of paragraph (2)(b), the relevant settlement agent, central counterparty or clearing house shall be taken to have notice of an event specified in paragraph (1)(a), (b) or (c) if it deliberately failed to make enquiries as to that matter in circumstances in which a reasonable and honest person would have done so.

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<sup>(19)</sup> 1986 c. 45.

<sup>(20)</sup> 1985 c. 66.

### **Disapplication of certain provisions of Part VII**

**21.**—(1) The provisions of the Companies Act 1989 mentioned in paragraph (2) do not apply in relation to—

- (a) a market contract which is also a transfer order effected through a designated system; or
- (b) a market charge which is also a collateral security charge.

(2) The provisions referred to in paragraph (1) are as follows—

- (a) section 163(4) to (6) (net sum payable on completion of default proceedings);
- (b) section 164(4) to (6) (disclaimer of property, rescission of contracts, &c); and
- (c) section 175(5) and (6) (administration orders, &c).

### **Notification of insolvency order or passing of resolution for creditors' voluntary winding up**

**22.**—(1) Upon the making of an order for bankruptcy, sequestration, administration or winding up in respect of a participant in a designated system, the court shall forthwith notify both the system and the designating authority that such an order has been made.

(2) Following receipt of—

- (a) such notification from the court, or
- (b) notification from a participant of the passing of a creditors' voluntary winding-up resolution or of a trust deed becoming a protected trust deed, pursuant to paragraph 5(4) of the Schedule,

the designating authority shall forthwith inform the Treasury of the notification.

### **Applicable law relating to securities held as collateral security**

**23.** Where—

- (a) securities (including rights in securities) are provided as collateral security to a participant or a central bank (including any nominee, agent or third party acting on behalf of the participant or the central bank), and
- (b) a register, account or centralised deposit system located in an EEA State legally records the entitlement of that person to the collateral security,

the rights of that person as a holder of collateral security in relation to those securities shall be governed by the law of the EEA State or, where appropriate, the law of the part of the EEA State, where the register, account, or centralised deposit system is located.

### **Applicable law where insolvency proceedings are brought**

**24.** Where insolvency proceedings are brought in any jurisdiction against a person who participates, or has participated, in a system designated for the purposes of the Settlement Finality Directive, any question relating to the rights and obligations arising from, or in connection with, that participation and falling to be determined by a court in England and Wales or in Scotland shall (subject to regulation 23) be determined in accordance with the law governing that system.

### **Insolvency proceedings in other jurisdictions**

**25.**—(1) The references to insolvency law in section 426 of the Insolvency Act 1986 (co-operation between courts exercising jurisdiction in relation to insolvency) include, in relation to a part of the United Kingdom, this Part and, in relation to a relevant country or territory within the meaning of that section, so much of the law of that country or territory as corresponds to this Part.

(2) A court shall not, in pursuance of that section or any other enactment or rule of law, recognise or give effect to—

- (a) any order of a court exercising jurisdiction in relation to insolvency law in a country or territory outside the United Kingdom, or
- (b) any act of a person appointed in such a country or territory to discharge any functions under insolvency law,

in so far as the making of the order or the doing of the act would be prohibited in the case of a court in England and Wales or Scotland or a relevant office-holder by this Part.

(3) Paragraph (2) does not affect the recognition or enforcement of a judgment required to be recognised or enforced under or by virtue of the Civil Jurisdiction and Judgments Act 1982<sup>(21)</sup>.

### **Systems designated in other EEA States, Northern Ireland and Gibraltar**

**26.**—(1) Where an equivalent overseas order or equivalent overseas security is subject to the insolvency law of England and Wales or Scotland, this Part shall apply—

- (a) in relation to the equivalent overseas order as it applies in relation to a transfer order; and
- (b) in relation to the equivalent overseas security as it applies in relation to collateral security in connection with a designated system.

(2) In paragraph (1)—

- (a) “equivalent overseas order” means an order having the like effect as a transfer order which is effected through a system designated for the purposes of the Settlement Finality Directive in another EEA State, Northern Ireland or Gibraltar; and
- (b) “equivalent overseas security” means any realisable assets provided under a charge or a repurchase or similar agreement, or otherwise (including money provided under a charge) for the purpose of securing rights and obligations potentially arising in connection with such a system.

*Jim Dowd*

*Bob Ainsworth*

Two of the Lords Commissioners of Her Majesty’s Treasury

2nd November 1999

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(21) 1982 c. 27.

## SCHEDULE

Regulation 4(1)

### REQUIREMENTS FOR DESIGNATION OF SYSTEM

#### *Establishment, participation and governing law*

**1.—**(1) The head office of at least one of the participants in the system must be in Great Britain and the law of England and Wales or Scotland must be the governing law of the system.

(2) There must be not less than three institutions participating in the system, unless otherwise determined by the designating authority in any case where—

- (a) there are two institutions participating in a system; and
- (b) the designating authority considers that designation is required on the grounds of systemic risk.

(3) The system must be a system through which transfer orders are effected.

(4) Where orders relating to financial instruments other than securities are effected through the system—

- (a) the system must primarily be a system through which securities transfer orders are effected; and
- (b) the designating authority must consider that designation is required on grounds of systemic risk.

#### *Arrangements and resources*

**2.** The system must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules or, as respects monitoring, arrangements providing for that function to be performed on its behalf (and without affecting its responsibility) by another body or person who is able and willing to perform it.

#### *Financial resources*

**3.** The system must have financial resources sufficient for the proper performance of its functions as a system.

#### *Co-operation with other authorities*

**4.** The system must be able and willing to co-operate, by the sharing of information and otherwise, with—

- (a) the Financial Services Authority,
- (b) the Bank of England,
- (c) any relevant office-holder, and
- (d) any authority, body or person having responsibility for any matter arising out of, or connected with, the default of a participant.

#### *Specific provision in the rules*

**5.—**(1) The rules of the system must—

- (a) specify the point at which a transfer order takes effect as having been entered into the system,

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

- (b) specify the point after which a transfer order may not be revoked by a participant or any other party, and
  - (c) prohibit the revocation by a participant or any other party of a transfer order from the point specified in accordance with paragraph (b).
- (2) The rules of the system must require each institution which participates in the system to provide upon payment of a reasonable charge the information mentioned in sub-paragraph (3) to any person who requests it, save where the request is frivolous or vexatious. The rules must require the information to be provided within fourteen days of the request being made.
- (3) The information referred to in sub-paragraph (2) is as follows—
- (a) details of the systems which are designated for the purposes of the Settlement Finality Directive in which the institution participates, and
  - (b) information about the main rules governing the functioning of those systems.
- (4) The rules of the system must require each participant upon—
- (a) the passing of a creditors' voluntary winding up resolution, or
  - (b) a trust deed granted by him becoming a protected trust deed,
- to notify forthwith both the system and the designating authority that such a resolution has been passed, or, as the case may be, that such a trust deed has become a protected trust deed.

#### *Default arrangements*

6. The system must have default arrangements which are appropriate for that system in all the circumstances.

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## **EXPLANATORY NOTE**

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

The Regulations implement Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems (OJ L166, 19.5.98, p. 45) (“the Directive”). The Directive seeks to reduce the risks associated with participation in payment and securities settlement systems by minimising the disruption caused by insolvency proceedings brought against a participant in such a system.

The protection provided by the Regulations is given to any system which has been designated by the Financial Services Authority or the Bank of England. Regulations 3 to 12 make provision in relation to designation and the Schedule sets out the requirements that a designated system must satisfy.

Regulations 13 to 19 modify the law of insolvency in so far as it applies to transfer orders effected through a designated system and to collateral security provided in connection with participation in designated system. Regulation 20 provides that the modifications to the law of insolvency cease to apply to a transfer order which is entered into a designated system after insolvency, unless the transfer order is carried out on the same day as the insolvency and the relevant persons do not have notice of the insolvency at the time of settlement. Regulations 13 to 19 also apply to collateral security which is provided to a central bank in connection with its functions as a central bank.



Where a court makes an insolvency order against a participant in a designated system, the court is required by virtue of regulation 22 to notify both the relevant designated system and the relevant designating authority that such an order has been made. Similarly, paragraph 5(4) of the Schedule provides that a designated system must require a participant to notify the system and the relevant designating authority that a resolution has been passed for a creditors' voluntary winding up of the participant or that a trust deed granted by the participant has become a protected trust deed.

Regulation 23 specifies the law which governs the rights of a person as a holder of collateral security when their entitlement is recorded in a register, account or centralised deposit system. The governing law is specified to be the law of the EEA State (or part of the EEA State) where the register, account or centralised deposit system is located. Regulation 24 provides that any other rights or obligations arising from, or in connection with, participation in a system designated under the Directive are to be determined by the law governing the system.

Regulation 26 makes provision in relation to transfer orders and collateral security in connection with a system designated in another EEA State, Northern Ireland or Gibraltar.