
STATUTORY INSTRUMENTS

1999 No. 2979

The Financial Markets and Insolvency (Settlement Finality) Regulations 1999

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—

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

“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](#)(2) 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(3)) 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,
 - (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(4), 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(5) as adjusted by the Protocol signed at Brussels on 17th March 1993(6);

“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;

(2) 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).

(3) 1986 c. 45.

(4) S.I.1995/2049.

(5) Cm 2073.

(6) Cm 2183.

- (b) an investment firm as defined in point 2 of Article 1 of Council Directive [93/22/EEC](#)(7) 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(8);

“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
- (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(9) (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](#);

(7) 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).

(8) 1989 c. 40.

(9) 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).

“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 **(10)**;

“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).

(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**(11)**;
- (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.

(10) O.J. No. L166, 11.6.98, p. 45.

(11) [1986 c. 53](#).