
STATUTORY INSTRUMENTS

2003 No. 3226

The Financial Collateral Arrangements (No.2) Regulations 2003

PART 1

General

Interpretation

3. In these Regulations —

“book entry securities collateral” means financial collateral subject to a financial collateral arrangement which consists of financial instruments, title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary;

“cash” means money in any currency, credited to an account, or a similar claim for repayment of money and includes money market deposits and sums due or payable to, or received between the parties in connection with the operation of a financial collateral arrangement or a close-out netting provision;

“close-out netting provision” means a term of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or any legislative provision under which on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise—

- (a) the obligations of the parties are accelerated to become immediately due and expressed as an obligation to pay an amount representing the original obligation’s estimated current value or replacement cost, or are terminated and replaced by an obligation to pay such an amount; or
- (b) an account is taken of what is due from each party to the other in respect of such obligations and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party;

“enforcement event” means an event of default, or any similar event as agreed between the parties, on the occurrence of which, under the terms of a financial collateral arrangement or by operation of law, the collateral-taker is entitled to realise or appropriate financial collateral or a close-out netting provision comes into effect;

“equivalent financial collateral” means—

- (a) in relation to cash, a payment of the same amount and in the same currency;
- (b) in relation to financial instruments, financial instruments of the same issuer or debtor, forming part of the same issue or class and of the same nominal amount, currency and description or, where the financial collateral arrangement provides for the transfer of other assets following the occurrence of any event relating to or affecting any financial instruments provided as financial collateral, those other assets;

and includes the original financial collateral provided under the arrangement;

“financial collateral arrangement” means a title transfer financial collateral arrangement or a security financial collateral arrangement, whether or not these are covered by a master agreement or general terms and conditions;

“financial collateral” means either cash or financial instruments;

“financial instruments” means—

- (a) shares in companies and other securities equivalent to shares in companies;
- (b) bonds and other forms of instruments giving rise to or acknowledging indebtedness if these are tradeable on the capital market; and
- (c) any other securities which are normally dealt in and which give the right to acquire any such shares, bonds, instruments or other securities by subscription, purchase or exchange or which give rise to a cash settlement (excluding instruments of payment);

and includes units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 (1), eligible debt securities within the meaning of the Uncertificated Securities Regulations 2001 (2), money market instruments, claims relating to or rights in or in respect of any of the financial instruments included in this definition and any rights, privileges or benefits attached to or arising from any such financial instruments;

“intermediary” means a person that maintains registers or accounts to which financial instruments may be credited or debited, for others or both for others and for its own account but does not include—

- (a) a person who acts as a registrar or transfer agent for the issuer of financial instruments; or
- (b) a person who maintains registers or accounts in the capacity of operator of a system for the holding and transfer of financial instruments on records of the issuer or other records which constitute the primary record of entitlement to financial instruments as against the issuer;

“non-natural person” means any corporate body, unincorporated firm, partnership or body with legal personality except an individual, including any such entity constituted under the law of a country or territory outside the United Kingdom or any such entity constituted under international law;

“relevant account” means, in relation to book entry securities collateral which is subject to a financial collateral arrangement, the register or account, which may be maintained by the collateral-taker, in which entries are made, by which that book entry securities collateral is transferred or designated so as to be in the possession or under the control of the collateral-taker or a person acting on its behalf;

“relevant financial obligations” means the obligations which are secured or otherwise covered by a financial collateral arrangement, and such obligations may consist of or include—

- (a) present or future, actual or contingent or prospective obligations (including such obligations arising under a master agreement or similar arrangement);
- (b) obligations owed to the collateral-taker by a person other than the collateral-provider;
- (c) obligations of a specified class or kind arising from time to time;

“reorganisation measures” means—

- (a) administration within the meaning of the Insolvency Act 1986 (3) or the Insolvency (Northern Ireland) Order 1989 (4);
- (b) a company voluntary arrangement within the meaning of that Act or that Order ;

(1) 2000 c. 8.

(2) S.I.2001/3755 as amended by S.I.2003/1633.

(3) 1986 c. 45 (As amended by Schedule 16 to the Enterprise Act 2002 c. 40).

(4) S.I. 1989/2405 (N.I. 19).

- (c) administration of a partnership within the meaning of that Act (5) or that Order or, in the case of a Scottish partnership, the Bankruptcy (Scotland) Act 1985 (6);
- (d) a partnership voluntary arrangement within the meaning of the Insolvency Act 1986 (7) or the Insolvency (Northern Ireland) Order 1989 or, in the case of a Scottish partnership, the Bankruptcy (Scotland) Act 1985; and
- (e) the making of an interim order on an administration application;

“security financial collateral arrangement” means an agreement or arrangement, evidenced in writing, where—

- (a) the purpose of the agreement or arrangement is to secure the relevant financial obligations owed to the collateral-taker;
- (b) the collateral-provider creates or there arises a security interest in financial collateral to secure those obligations;
- (c) the financial collateral is delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral-taker or a person acting on its behalf; any right of the collateral-provider to substitute equivalent financial collateral or withdraw excess financial collateral shall not prevent the financial collateral being in the possession or under the control of the collateral-taker; and
- (d) the collateral-provider and the collateral-taker are both non-natural persons;

“security interest” means any legal or equitable interest or any right in security, other than a title transfer financial collateral arrangement, created or otherwise arising by way of security including—

- (a) a pledge;
- (b) a mortgage;
- (c) a fixed charge;
- (d) a charge created as a floating charge where the financial collateral charged is delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral-taker or a person acting on its behalf; any right of the collateral-provider to substitute equivalent financial collateral or withdraw excess financial collateral shall not prevent the financial collateral being in the possession or under the control of the collateral-taker; or
- (e) a lien;

“title transfer financial collateral arrangement” means an agreement or arrangement, including a repurchase agreement, evidenced in writing, where—

- (a) the purpose of the agreement or arrangement is to secure or otherwise cover the relevant financial obligations owed to the collateral-taker;
- (b) the collateral-provider transfers legal and beneficial ownership in financial collateral to a collateral-taker on terms that when the relevant financial obligations are discharged the collateral-taker must transfer legal and beneficial ownership of equivalent financial collateral to the collateral-provider; and
- (c) the collateral-provider and the collateral-taker are both non-natural persons;

“winding-up proceedings” means—

- (a) winding up by the court; or

(5) As modified by S.I. 1994/2421 (that order was amended by S.I. 2002/2708 and S.I. 2002/1308).

(6) 1985 c. 66.

(7) As modified by S.I. 1994 /2421.

(b) voluntary winding up;
within the meaning of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 or, in the case of Scottish partnerships, the Bankruptcy (Scotland) Act 1985.