
STATUTORY INSTRUMENTS

2011 No. 1301

The Investment Bank Special Administration
(England and Wales) Rules 2011

PART 6

Distributions to creditors

CHAPTER 1

Application

Distribution to creditors

148.—(1) This Chapter applies where the administrator makes, or proposes to make, a distribution to any class of creditors other than secured creditors.

(2) Where the distribution is to a particular class of creditors, references in this Chapter to creditors shall, in so far as the context requires, be a reference to that class of creditors only.

(3) In a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, no distributions to creditors under this Chapter shall be made without the consent of the Bank of England.

(4) The administrator shall give notice to the creditors of his intention to declare and distribute a dividend in accordance with rule 175.

(5) Where it is intended that the distribution is to be a sole or final dividend, the administrator shall, after the date specified in the notice referred to in paragraph (4)—

- (a) defray any outstanding expenses of a voluntary arrangement that immediately preceded the special administration in accordance with rule 133;
- (b) defray any items payable in accordance with rules 134 and 136;
- (c) defray any amounts (including any debts or liabilities and the administrator's own remuneration and expenses) which would, if the administrator were to cease to be the administrator of the investment bank, be payable out of the property of which the administrator had custody or control in accordance with paragraph 99; and
- (d) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

(6) The court may, on the application of any person, postpone the date specified in the notice.

Debts of investment bank to rank equally

149. Debts, other than preferential debts, rank equally between themselves in the special administration and, after the preferential debts, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

Supplementary provisions as to dividend

150.—(1) In the calculation and distribution of a dividend the administrator shall make provision for—

- (a) any debts which appear to the administrator to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs;
- (b) any debts which are the subject of claims which have not yet been determined; and
- (c) disputed proofs and claims.

(2) A creditor who has not proved their debt before the declaration of any dividend is not entitled to disturb, by reason that they have not participated in it, the distribution of that dividend or any other dividend declared before their debt was proved, but—

- (a) when the creditor has proved that debt, they are entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which the creditor has failed to receive; and
- (b) any dividends payable under sub-paragraph (a) shall be paid before the money is applied to the payment of any such further dividend.

(3) No action lies against the administrator for a dividend; but if the administrator refuses to pay a dividend the court may, if it thinks just, order the administrator to pay it and also to pay, out of the administrator’s own money—

- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838(1), from the time when it was withheld; and
- (b) the costs of the proceedings in which the order to pay is made.

Division of unsold assets

151.—(1) The administrator may, with the permission of the creditors’ committee, or if there is no creditors’ committee, the creditors, divide in its existing form amongst the investment bank’s creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) The administrator must—

- (a) in the receipts and payments account included in the final progress report under rule 220, state the estimated value of the property divided amongst the creditors of the investment during the period to which the report relates, and
- (b) as a note to the account, provide details of the basis of the valuation.

CHAPTER 2

Proofs of debts

Proving a debt

152.—(1) A person claiming to be a creditor of the investment bank and wishing to recover their debt in whole or in part must (subject to any order of the court to the contrary) submit their claim in writing to the administrator.

(2) A creditor who claims is referred to as “proving” for their debt and a document by which that creditor seeks to establish their claim is their “proof”.

(1) [1838 c.110 1 and 2 Victoria](#): section 17 was amended by the Statute Law Revision (No. 2) Act 1888 (55 and 56 Victoria), by the Civil Procedure Acts Repeal Act [1879 \(c. 59\)](#) section 2, Schedule, Part 1 and by [S.I. 1993/565](#) and [S.I.1998/2940](#).

- (3) Subject to the next paragraph, a proof must—
- (a) be made out by, or under the direction of, the creditor and authenticated by the creditor or a person authorised in that behalf; and
 - (b) state the following matters—
 - (i) the creditor’s name and address,
 - (ii) if the creditor is a company, its registered number;
 - (iii) the total amount of the creditor’s claim (including value added tax) as at the date on which the investment bank entered special administration, less any payments made after that date in respect of the claim, any deduction under rule 163 and any adjustment by way of set-off in accordance with rule 164 or, as the case may be, rule 165;
 - (iv) whether or not the claim includes outstanding uncapitalised interest,
 - (v) particulars of how and when the debt was incurred by the investment bank,
 - (vi) particulars of any security held, the date on which it was given and the value which the creditor puts on it,
 - (vii) details of any reservation of title in respect of goods to which the debt refers, and
 - (viii) the name, address and authority of the person authenticating the proof (if not the creditor).
- (4) There shall be specified in the proof details of any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such document be attached to the proof or submitted with it.
- (5) The administrator may call for any document or other evidence to be produced, where the administrator thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

Costs of proving

- 153.** Unless the court otherwise orders—
- (a) every creditor bears the cost of proving their own debt, including costs incurred in providing documents or evidence under rule 152; and
 - (b) costs incurred by the administrator in estimating the quantum of a debt under rule 160 are payable out of the assets as an expense of the administration.

Administrator to allow inspection of proofs

- 154.—**(1) The administrator shall, so long as proofs lodged are in the administrator’s hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—
- (a) any creditor who has submitted a proof of debt (unless that proof has been wholly rejected for purposes of dividend or otherwise);
 - (b) any contributory of the company; and
 - (c) any person acting on behalf of either of the above.

New administrator appointed

- 155.—**(1) If a new administrator is appointed in place of another, the former administrator must as soon as reasonably practicable, transmit to the new administrator all proofs received, together with an itemised list of them.

(2) The new administrator shall authenticate the list by way of receipt for the proofs, and return it to the former administrator.

(3) From then on, all proofs of debt must be sent to and retained by the new administrator.

Admission and rejection of proofs for dividend

156.—(1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.

(2) If the administrator rejects a proof in whole or in part, the administrator shall prepare a written statement of reasons for doing so, and send it as soon as reasonably practicable to the creditor.

Appeal against decision on proof

157.—(1) If a creditor is dissatisfied with the administrator’s decision with respect to their proof (including any decision on the question of preference), that creditor may apply to the court for the decision to be reversed or varied and the application must be made within 21 days of the creditor receiving the statement sent under rule 156.

(2) A member or any other creditor may, if dissatisfied with the administrator’s decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the administrator’s decision.

(3) Notice of an application under paragraph (1) or (2) shall be given by the applicant to—

(a) the FSA, and

(b) in a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, the Bank of England.

(4) Where application is made to the court under this rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to—

(a) the creditor who lodged the proof in question (if the applicant is not that creditor);

(b) the administrator;

(c) the FSA; and

(d) in a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, the Bank of England.

(5) The administrator shall, on receipt of the notice, file with the court the relevant proof, together (if appropriate) with a copy of the statement sent under rule 156.

(6) Where the application is made by a member, the court must not disallow the proof (in whole or in part) unless the member shows that there is (or would be but for the amount claimed in the proof), or that it is likely that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the investment bank would be entitled.

(7) After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the administrator.

(8) The administrator is not personally liable for costs incurred by any person in respect of an application under this rule unless the court otherwise orders.

Withdrawal or variation of proof

158. A creditor’s proof may at any time, by agreement with the administrator, be withdrawn or varied as to the amount claimed.

Expunging of proof by the court

159.—(1) The court may expunge a proof or reduce the amount claimed—

- (a) on the administrator’s application, where the administrator thinks that the proof has been improperly admitted, or ought to be reduced; or
- (b) on the application of a creditor, if the administrator declines to interfere in the matter.

(2) Where application is made to the court under this rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant—

- (a) in the case of an application by the administrator, to the creditor who made the proof; and
- (b) in the case of an application by a creditor, to the administrator and to the creditor who made the proof (if the applicant is not the same creditor).

CHAPTER 3

Quantification of claims

Estimate of quantum

160.—(1) The administrator shall estimate the value of any debt which, by reason of it being subject to any contingency or for any other reason, does not bear a certain value; and a previous estimation may be revised, if the administrator thinks fit, by reference to any change of circumstances or to information becoming available to the administrator.

(2) The creditors shall be informed of the estimation and any revision of it.

(3) Where the value of a debt is estimated under this rule, the amount provable in the administration in the case of that debt is that of the estimate for the time being.

Negotiable instruments

161. Unless the administrator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or the creditor’s authorised representative to be a true copy.

Secured creditors

162.—(1) If a secured creditor realises their security, the creditor may prove for the balance of their debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders their security for the general benefit of creditors, they may prove for their whole debt, as if it were unsecured.

Discounts

163. There shall in every case be deducted from the claim all trade and other discounts which would have been available to the investment bank but for it going into special administration, except any discount for immediate, early or cash settlement.

Mutual credit and set-off

164.—(1) This rule applies where the administrator, being authorised to make the distribution in question, has, pursuant to rule 175, given notice of a proposal to make the distribution.

(2) In this rule, “mutual dealings” means mutual credits, mutual debts or other mutual dealings between the investment bank and a creditor of the investment bank proving or claiming to prove for a debt in the special administration, but does not include any of the following—

- (a) any debt arising out of an obligation incurred after the investment bank entered special administration;
- (b) any debt arising out of an obligation incurred at a time when the creditor had notice that an application for a special administration order was pending;
- (c) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—
 - (i) after the investment bank entered administration, or
 - (ii) at a time when the creditor had notice that an application for a special administration order was pending.

(3) An account shall be taken as at the date of the notice referred to in paragraph (1) of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(4) A sum shall be regarded as being due to or from the investment bank for the purposes of paragraph (3) whether—

- (a) it is payable at present or in the future;
- (b) the obligation by virtue of which it is payable is certain or contingent; or
- (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(5) Rule 160 shall apply for the purposes of this rule to any obligation to or from the investment bank which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 166 to 168 shall apply for the purposes of this rule in relation to any sums due to the investment bank which—

- (a) are payable in a currency other than sterling;
- (b) are of a periodical nature; or
- (c) bear interest.

(7) Rule 186 shall apply for the purposes of this rule to any sum due to or from the investment bank which is payable in the future.

(8) Only the balance (if any) of the account owed to the creditor is provable in the special administration. Alternatively the balance (if any) owed to the investment bank shall be paid to the administrator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when that debt becomes due and payable.

(9) In this rule, “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

Application of rule 164 in a special administration (bank administration) and special administration (bank insolvency)

165.—(1) This rule applies—

- (a) in a special administration (bank insolvency); and

- (b) in a special administration (bank administration) if all or part of a creditor's claim against the investment bank is in respect of protected deposits.
- (2) Rule 164 shall apply, but for the purpose of determining the sums due from the investment bank to an eligible depositor in respect of protected deposits under rule 164(3)—
 - (a) where the total of the sums held by the investment bank for the depositor in respect of protected deposits is no more than the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000 ("the limit"), then paragraph (3) applies; and
 - (b) where the sums held exceed the limit, then paragraph (4) applies.
- (3) Where this paragraph applies, there shall be deemed to have been no mutual dealings, regardless of whether there are any sums due from the depositor to the investment bank, and the sum due to the depositor from the investment bank will be the total of the sums held by the investment bank for that depositor in respect of the protected deposits.
- (4) Where this paragraph applies then—
 - (a) any mutual dealings shall be treated as being mutual dealings only in relation to the amount by which the total of the sums due to the depositor exceeds the limit, and
 - (b) the sums due from the investment bank to the depositor in respect of the protected deposits will be—
 - (i) the amount by which that total exceeds the limit, set off against the amounts due to the investment bank from the depositor in accordance with rule 164(3); and
 - (ii) the sums held by the investment bank for the depositor in respect of protected deposits up to the limit.
- (5) Any arrangements with regard to set-off between the investment bank and the eligible depositor in existence before the date of the notice referred to in rule 164(1) shall be subject to this rule in so far as they relate to protected deposits.
- (6) In this rule—
 - "eligible depositor" has the meaning given to it by section 93(3) of the 2009 Act;
 - "FSA Rules" means the FSA's Compensation Sourcebook, as amended from time to time, made under section 213 of the Financial Services and Markets Act 2000(2); and
 - "protected deposit" means a protected deposit within the meaning given by the FSA Rules held by the investment bank at the date of the notice referred to in rule 164(1).

Debt in a foreign currency

166.—(1) For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date when the investment bank entered special administration.

(2) "The official exchange rate" means the mean of the buying and selling spot rates prevailing in the London market as published at the close of business for the date in question. In the absence of any such published rate, it is such rate as the court determines.

Payments of a periodical nature

167.—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the investment bank entered special administration.

(2) 2000 c.8: section 215 was amended by sections 169 and 170(2) of the 2009 Act.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

Interest

168.—(1) In this Rule, “the relevant date” means the date on which the investment bank entered special administration.

(2) Where a debt proved in the special administration bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.

(3) In the following circumstances the creditor’s claim may include interest on the debt for periods before the relevant date, although not previously reserved or agreed.

(4) If the debt is due by virtue of a written instrument and payable at a certain time, interest may be claimed for the period from that time to the relevant date.

(5) If the debt is due otherwise, interest may only be claimed if, before the relevant date, a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment.

(6) Interest under paragraph (5) may only be claimed for the period from the date of the demand to the relevant date and for all the purposes of the Regulations and these Rules shall be chargeable at a rate not exceeding that mentioned in paragraph (7).

(7) The rate of interest to be claimed under paragraphs (4) and (5) is the rate specified in section 17 of the Judgments Act 1838 on the relevant date.

(8) Any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date.

(9) All interest payable under paragraph (8) ranks equally whether or not the debts on which it is payable rank equally.

(10) The rate of interest payable under paragraph (8) is whichever is the greater of the rate specified under paragraph (7) and the rate applicable to the debt apart from the special administration.

Debt payable at a future time

169. A creditor may prove for a debt of which payment was not yet due on the date when the investment bank entered special administration, subject to rule 186.

Value of security

170.—(1) A secured creditor may, with the agreement of the administrator or the permission of the court, at any time alter the value which that creditor has, in their proof of debt, put upon their security.

(2) However, if a secured creditor—

(a) being the applicant for an special administration order, has in the application put a value on their security; or

(b) has voted in respect of the unsecured balance of their debt,

that creditor may re-value their security only with permission of the court.

Surrender for non-disclosure

171.—(1) If a secured creditor omits to disclose their security in their proof of debt, the creditor shall surrender their security for the general benefit of creditors, unless the court, on application by

that creditor, relieves them from the effect of this rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just.

Redemption by administrator

172.—(1) The administrator may at any time give notice to a creditor whose debt is secured that it is proposed, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the administrator may allow) in which, if the creditor so wishes, to exercise their right to revalue their security (with the permission of the court, where rule 170 applies). If the creditor re-values their security, the administrator may only redeem at the new value.

(3) If the administrator redeems the security, the cost of transferring it is payable out of the assets.

(4) A secured creditor may at any time, by a notice in writing, call on the administrator to elect whether the administrator will or will not exercise their power to redeem the security at the value then placed on it; and the administrator then has 3 months in which to exercise the power or determine not to exercise it.

Test of security's value

173.—(1) Subject as follows, the administrator, if dissatisfied with the value which a secured creditor puts on their security (whether in their proof or by way of re-valuation under rule 170), may require any property comprised in the security to be offered for sale.

(2) The terms of sale shall be such as may be agreed, or as the court may direct; and if the sale is by auction, the administrator on behalf of the investment bank, and the creditor on their own behalf, may appear and bid.

(3) This rule does not apply if the security has been revalued and the revaluation has been approved by the court.

Realisation of security by creditor

174. If a creditor who has valued their security subsequently realises it (whether or not at the instance of the administrator)—

- (a) the net amount realised shall be substituted for the value previously put by the creditor on the security; and
- (b) that amount shall be treated in all respects as an amended valuation made by the creditor.

Notice of proposed distribution

175.—(1) Where an administrator is proposing to make a distribution to creditors, the administrator shall give notice of that fact.

(2) The notice in paragraph (1) shall—

- (a) state whether the distribution is to preferential creditors or preferential creditors and unsecured creditors; and
- (b) where the administrator proposes to make a distribution to unsecured creditors, state the value of the prescribed part, except where the court has made an order under section 176A(5) of the 1986 Act.

- (3) The notice in paragraph (1) shall be given to—
- (a) all creditors whose addresses are known to the administrator;
 - (b) the FSA;
 - (c) in a special administration (bank administration), the FSCS; and
 - (d) in a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, the Bank of England.
- (4) Subject to paragraph (5)(b), before declaring a dividend the administrator shall by notice invite the creditors to prove their debts. Such notice—
- (a) shall be gazetted; and
 - (b) may be advertised in such other manner as the administrator thinks fit.
- (5) A notice pursuant to paragraph (1) must, in addition to the standard contents—
- (a) state that it is the intention of the administrator to make a distribution to creditors within the period of 2 months from the last date for proving;
 - (b) specify whether the proposed dividend is interim or final;
 - (c) specify a date up to which proofs may be lodged being a date which—
 - (i) is the same date for all creditors; and
 - (ii) is not less than 21 days from that of the notice.
- (6) Where a dividend is to be declared for preferential creditors—
- (a) the notice pursuant to paragraph (1) need only to be given to those creditors in whose case the administrator has reason to believe that their debts are preferential; and
 - (b) the notice pursuant to paragraph (3) need only be given if the administrator thinks fit.

Admission or rejection of proofs

176.—(1) Unless the administrator has already dealt with them, within 5 business days of the last date for proving, the administrator shall—

- (a) admit or reject (in whole or in part) proofs that have been submitted; or
- (b) make such provision in respect of them as the administrator thinks fit.

(2) The administrator is not obliged to deal with proofs lodged after the last date for proving, but may do so, if the administrator thinks fit.

(3) In the declaration of a dividend no payment shall be made more than once by virtue of the same debt.

Postponement or cancellation of dividend

177.—(1) If in the period of 2 months referred to in rule 175(5)(a)—

- (a) the administrator has rejected a proof in whole or in part and application is made to the court for that decision to be reversed or varied; or
- (b) an application is made to the court for the administrator's decision on a proof to be reversed or varied, or for a proof to be expunged, or for a reduction of the amount claimed,

the administrator may postpone or cancel the dividend.

(2) Where in that same period the administrator considers that, due to the nature of the business of the investment bank, there is real complexity in admitting or rejecting proofs of claims submitted, or that the quantum of claims may be affected by any shortfalls in claims for client assets, the administrator may postpone the dividend.

Declaration of a dividend

178.—(1) Where rule 177(2) does not apply and subject to paragraph (2), within the 2 month period referred to in rule 175(5)(a) the administrator shall proceed to declare the dividend to one or more classes of creditor who have been given notice under that rule.

(2) Except with the permission of the court, the administrator shall not declare a dividend so long as there is pending any application to the court to reverse or vary the administrator's decision on a proof, or to expunge a proof or to reduce the amount claimed.

(3) If the court gives permission under paragraph (2), the administrator must make such provision in respect of the proof in question as the court directs.

Notice of declaration of a dividend

179.—(1) Where the administrator declares a dividend, notice of this shall be given to—

- (a) all creditors who have proved their debts;
- (b) the FSA;
- (c) in a special administration (bank administration), the FSCS; and
- (d) in a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, the Bank of England.

(2) The notice shall include the following particulars relating to the special administration—

- (a) amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;
- (b) payments made by the administrator when acting as such;
- (c) where the administrator proposed to make a distribution to unsecured creditors, the value of the prescribed part, except where the court has made an order under section 176A(5) of the 1986 Act;
- (d) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;
- (e) the total amount of dividend and the rate of dividend; and
- (f) whether, and if so when, any further dividend is expected to be declared.

(3) In a special administration (bank administration) where property of the investment bank has been transferred to a bridge bank under section 12 of the 2009 Act, if the administrator declares a dividend before the Bank of England has given an Objective A Achievement Notice, the notice shall also include details of any payment made from a scheme under a resolution fund order.

Payments of dividend and related matters

180.—(1) The dividend may be distributed simultaneously with the notice declaring it.

(2) Payment of dividend may be made by post, or arrangements may be made with any creditor for it to be paid in another way, or held for collection.

(3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

Notice of no dividend or no further dividend

181.—(1) If the administrator gives notice to creditors that no dividend (or as the case may be, no further dividend) can be declared, the notice shall contain a statement to the effect either—

- (a) that no funds have been realised; or
 - (b) that the funds realised have already been distributed or used or allocated for defraying the expenses of administration.
- (2) The notice to creditors in paragraph (1) shall also be given to—
- (a) the FSA;
 - (b) in a special administration (bank administration), the FSCS; and
 - (c) in a special administration (bank administration), in a case where the Bank of England consented to a distribution, to the Bank of England.

Proof altered after payment of dividend

182.—(1) If after payment of dividend the amount claimed by a creditor in their proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which that creditor has failed to receive.

(2) Any dividend or dividends payable under paragraph (1) shall be paid before the money there referred to is applied to the payment of any such further dividend.

(3) If, after a creditor's proof has been admitted, the proof is withdrawn or expunged, or the amount is reduced, the creditor is liable to repay to the administrator any amount overpaid by way of dividend.

Secured creditors

183.—(1) The following applies where a creditor re-values their security at a time when a dividend has been declared.

(2) If the revaluation results in a reduction of the creditor's unsecured claim ranking for dividend, the creditor shall, as soon as reasonably practicable, repay to the administrator, for the credit of the administration, any amount received by the creditor as dividend in excess of that to which that creditor would be entitled having regard to the revaluation of the security.

(3) If the revaluation results in an increase of the creditor's unsecured claim, the creditor is entitled to receive from the administrator, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which the creditor has failed to receive, having regard to the revaluation of the security.

(4) However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the revaluation.

Disqualification from dividend

184.—(1) If a creditor contravenes any provision of the Regulations or these Rules relating to the valuation of securities, the court may, on the application of the administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.

(2) Notice of an application under paragraph (1) shall be given by the administrator to the FSA and the FSA shall have the right to appear and be heard at the hearing of the application.

Assignment of right to dividend

185.—(1) If a person, entitled to a dividend, gives notice to the administrator that they wish the dividend to be paid to another person, or that they have assigned that entitlement to another person, the administrator shall pay the dividend to that other accordingly.

(2) A notice given under this rule must specify the name and address of the person to whom payment is to be made.

Debt payable at a future time

186.—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, that creditor is entitled to dividend equally with other creditors, but subject as follows.

(2) For the purpose of dividend (and no other purpose) the amount of the creditor's admitted proof (or, if a distribution has previously been made to that creditor, the amount remaining outstanding in respect of their admitted proof) shall be reduced by applying the following formula—

$$\frac{X}{1.05^n}$$

where—

- (a) “X” is the value of the admitted proof; and
- (b) “n” is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years and months in a decimalised form.

(3) In paragraph (2), “relevant date” means the date that the investment bank entered special administration.