
STATUTORY INSTRUMENTS

1995 No. 2049

**The Financial Markets and Insolvency
(Money Market) Regulations 1995**

MONEY MARKET CHARGES

Money market charges

20. The general law of insolvency shall have effect in relation to a money market charge subject to the provisions of regulations 21 to 24 of these Regulations.

Administration orders, &c

21.—(1) The provisions of this regulation are subject to the provisions of regulations 22 to 24 below.

(2) The following provisions of the Insolvency Act 1986⁽¹⁾(which relate to administration orders and administrators) do not apply in relation to a money market 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 requested by administrator) does not apply to a receiver appointed under a money market charge.

(3) However, where a money market 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 market charge, the court may, on the application of any person interested, order that there shall be taken after enforcement of the money market 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 money market charge.

(4) The following provisions of the Insolvency Act 1986 (which relate to the powers of receivers) do not apply to a money market charge—

- (a) section 43 (power of administrative receiver to dispose of charged property); and
- (b) section 61 (power of receiver in Scotland to dispose of an interest in property).

(5) Sections 127 and 284 of the Insolvency Act 1986 (avoidance of property dispositions effected after the commencement of winding up or presentation of a bankruptcy petition), and section 32(8) of the Bankruptcy (Scotland) Act 1985⁽²⁾(effect of dealing with debtor relating to estate vested in permanent trustee), do not apply to a disposition of property as a result of which the property becomes subject to a money market charge or any transaction pursuant to which that disposition is made.

(6) However, if a person (other than the chargee under the money market charge) who is a party to a disposition mentioned in paragraph (5) above has notice at the time of the disposition that a

(1) 1986 c. 45.
(2) 1985 c. 66.

petition has been presented for the winding up, bankruptcy or sequestration of the estate of the party making the disposition, the value of any profit to him arising from the disposition is recoverable by the relevant office-holder unless the court directs otherwise.

(7) Any sum recoverable by virtue of paragraph (6) above ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.

(8) In a case falling within paragraph (5) above (as a disposition of property as a result of which the property becomes subject to a money market charge) and section 164(3) of the Act as it has effect by virtue of these Regulations (as the provision of margin or other property in relation to money market contracts), section 164(4), as it has effect by virtue of these Regulations, applies with respect to the recovery of the amount or value of the margin or other property and paragraph (6) above does not apply.

Limitations on extent to which charge to be treated as money market charge

22.—(1) Where a money market charge is granted partly for purposes other than securing debts or liabilities arising in connection with the settlement of money market contracts or related contracts, the provisions of these Regulations apply in relation to it only in so far as it has effect for the purpose of securing such debts and liabilities.

(2) The provisions of these Regulations shall not have effect in relation to any money market charge, whether fixed or floating, to the extent that it is a charge on land or any interest in land.

(3) For the purposes of paragraph (2) above, a charge on a debenture forming part of a series shall not be treated as a charge on land or any interest in land by reason of the fact that the debenture is itself secured by a charge on land or any interest in land.

(4) The provisions of these Regulations shall apply to a money market charge only to the extent that—

- (a) it is a charge over property provided, whether as margin or otherwise, by a person to a listed person for the purposes of or in connection with the settlement of money market contracts or related contracts; and
- (b) either—
 - (i) it secures the obligation to pay to that listed person the net sum referred to in paragraph 2(2)(a) of the Schedule to these Regulations; or
 - (ii) its enforcement is, by reason of the inadequacy of other property provided to that listed person, whether as margin or otherwise, necessary to enable that listed person to settle money market contracts or related contracts.

Limitation of disapplication of sections 10(1)(b) and 11(3)(c) of Insolvency Act 1986 in relation to certain charges

23. The disapplication of sections 10(1)(b) and 11(3)(c) of the Insolvency Act 1986 by section 175(1)(a) of the Act as it applies by virtue of these Regulations shall be limited in respect of a charge falling within sub-paragraphs (a) and (b)(ii) of regulation 22(4) of these Regulations so that it has effect only to the extent necessary for there to be realised a sum equal to the total amount necessary to enable the listed person to settle money market contracts and related contracts effected before the end of the tenth business day after the day on which an administration order is made pursuant to the petition.

Ability of administrator or receiver to recover assets in case of property subject to certain charges

24.—(1) The disapplication of sections 15(1) and (2), 43 and 61 of the Insolvency Act 1986 by section 175(1)(b) and 175(3) of the Act as they apply by virtue of these Regulations shall cease to have effect in relation to a charge of the kind mentioned in regulation 23 of these Regulations after the end of the tenth business day after the day on which an administration order is made or, as the case may be, an administrative receiver or a receiver is appointed in relation to the grantor of the charge so far as the charge has effect in relation to property which is not, on the basis of a valuation conducted in accordance with paragraph (2) of this Regulation, required for the realisation of the sum referred to in regulation 23 of these Regulations.

(2) For the purpose of paragraph (1) of this Regulation, the value of any property shall be the value agreed between whichever is relevant of the administrator, administrative receiver or receiver on the one hand and the listed person on the other.