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## EXPLANATORY NOTE

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

These Regulations extend the definition of “investment bank” in section 232 of the Banking Act 2009 (c. 1) (“the Act”) and amend the Investment Bank Special Administration Regulations 2011 (“the principal Regulations”).

The principal Regulations provide a special administration regime for investment banks (as defined in section 232 of the Act). Part 2 of these Regulations brings two specified classes of institution within the definition of “investment bank” and amends section 232 of the Act in consequence of that change.

Part 3 of these Regulations amends the principal Regulations to implement certain recommendations made by Peter Bloxham in his review of the principal Regulations conducted under section 236 of the Act. The final review was presented to Parliament under that section in January 2014 and is available on HM Treasury’s website ([www.gov.uk/treasury](http://www.gov.uk/treasury)) or from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

Regulation 5 amends regulation 2 of the principal Regulations to provide for the interpretation of expressions used in provisions inserted or substituted by other amendments.

Regulation 7 inserts regulation 10A of the principal Regulations. New regulation 10A requires the administrator to provide information and assistance to the scheme manager of the Financial Services Compensation Scheme (regulation 14 amends regulation 15 of the principal Regulations to enable the scheme manager to challenge the conduct of the administration on the grounds that the administrator is not performing the duties set out in new regulation 10A).

Regulation 8 inserts regulations 10B to 10G of the principal Regulations, which apply where the administrator, in pursuit of Objective 1, arranges a transfer of the whole or part of the investment bank’s business to another financial institution. New regulation 10B removes restrictions to the transfer of clients’ assets and contracts associated with the business transfer, and has the effect of treating contracts (to the extent transferred) as if they had been made by the transferee. New regulations 10C to 10G set out restrictions on what may be transferred by an arrangement which transfers just part of the investment bank’s business.

Regulation 9 inserts regulations 10H and 10I of the principal Regulations. New regulation 10H requires the administrator to—

- carry out a reconciliation of the amount of client money which the investment bank, according to its own records and accounts, is required to hold in accordance with rules made by the Financial Conduct Authority with the amount of client money which it holds in client money accounts; and
- make any transfer between client money accounts and the investment bank’s own bank accounts which is necessary to balance these amounts.

New regulation 10I provides that a client is not entitled to interest on a debt arising from the investment bank’s liability to return client money for the period starting when the investment bank enters special administration. This applies where a client brings an unsecured claim for payment of such a debt instead of a claim for a distribution from the pool of client money held by the investment bank on trust under rules made by the Financial Conduct Authority.

The amendments in regulations 10 and 12 make provision about setting bar dates for the submission of claims for the return of client assets. A “soft bar date” does not bar a client who has failed to

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claim in a distribution from claiming in a subsequent distribution. A “hard bar date” is a final date for submitting claims.

Regulation 10 amends regulation 11 of the principal Regulations, which allows the administrator to set a soft bar date for the return of client assets other than client money. After setting a soft bar date the administrator must return assets in accordance with insolvency rules, but may not do so without court approval. The amendments allow assets to be returned without court approval as long as the administrator has not yet applied for court approval to return any assets, the beneficial owner has been identified and the assets are not securities held in an account made up of multiple accounts of clients.

Regulation 12 inserts regulations 12A to 12F of the principal Regulations to allow the administrator to set a soft bar date for claims for the return of client money (12A), a hard bar date for such claims (12C) and a hard bar date for claims for the return of client assets other than client money (12B). Under new regulation 12B late claims may be met from residual assets or, if the administrator has disposed of residual assets, may be pursued as unsecured claims. Under new regulation 12C late claims may be pursued as unsecured claims. New regulation 12D sets out the powers of the court on an application to set a hard bar date.

Regulation 13 amends regulation 14 of the principal Regulations to extend provision for the continuation of specified kinds of supply contract to contracts for services relating to the safe custody of client assets.

Regulation 14 amends regulation 15 of the principal Regulations to modify further the application of paragraph 74 of Schedule B1 to the Insolvency Act 1986 to enable—

- the scheme manager of the Financial Services Compensation Scheme to challenge the conduct of the administration on the grounds that the administrator is not performing the duties set out in new regulation 10A; and
- persons interested in the performance of certain additional duties of the administrator to challenge the administrator’s conduct of the administration so far as it concerns those duties.

Regulation 15 inserts new regulation 19A of the principal Regulations to provide for payment out of the investment bank’s assets of any costs of identifying and distributing client assets which are incurred in consequence of a failure by the investment bank to comply with requirements relating to holding client assets.

Regulation 16 amends the table in Schedule 5 to the principal Regulations for the purposes of new regulation 10F (inserted by regulation 8), to specify the equivalent enactment in Northern Ireland which defines “capital market arrangement”.

Part 4 of these Regulations makes transitional provision with respect to Part 3 of these Regulations. It provides that none of the amendments of the principal Regulations has effect in relation to an investment bank put into special administration before the date on which these Regulations come into force.

An impact assessment of the effect of these Regulations on the costs of business and the voluntary sector has been prepared and is available on HM Treasury’s website ([www.gov.uk/treasury](http://www.gov.uk/treasury)) or from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum for these Regulations.