
DRAFT STATUTORY INSTRUMENTS

2017 No.

**The Investment Bank (Amendment of Definition) and
Special Administration (Amendment) Regulations 2017**

PART 3

Investment bank insolvency regulations

Objective 1—distribution of client money

12. After regulation 12 insert—

“Objective 1—distribution of client money

12A.—(1) If the administrator thinks it necessary in order to expedite the return of client money, the administrator may by notice set a bar date for the submission of client money claims.

(2) In setting a bar date the administrator must allow a reasonable time after notice of the special administration has been published (in accordance with insolvency rules) for persons to be able to calculate and submit client money claims.

(3) As soon as reasonably practicable after the bar date, the administrator must make a distribution of client money in accordance with client money rules to the clients or other persons who are entitled to payment under client money claims.

(4) A person who submits a client money claim after the bar date, but before the return of client money after that date, must, so far as is reasonably practicable, be included within the distribution of client money under paragraph (3).

(5) When determining the amount to be distributed under paragraph (3), the administrator must make allowance for the entitlement to the return of client money, by way of a subsequent distribution from the client money pool, of persons who have neither made a client money claim nor received any payment under a previous distribution of client money.

(6) Where the administrator has returned client money after the bar date, no payment or part of any payment made to any person under the distribution may be recovered for the purpose of meeting a late claim.

(7) The restriction in paragraph (6) does not apply where—

- (a) client money was returned to a person by the administrator in bad faith in which that person was complicit; or
- (b) a person to whom client money was returned is later found to have made a false claim to the money.

(8) Where the administrator determines that a client or other person who makes a late claim would have participated in the distribution of client money under paragraph (3) if the claim had been submitted before the return of client money after the bar date, the

administrator must include the claimant within a subsequent distribution from the client money pool.

(9) In this regulation—

“bar date” means a date by which clients are invited to submit client money claims for the purposes of this regulation;

“client money claims” are claims for the return of client money which has been pooled in accordance with client money rules; and

“late claim” means a client money claim received after the bar date other than a claim received after that date from a person who is included within the distribution of client money under paragraph (3).

Objectives 1 and 3—client assets (other than client money) which the administrator is unable to return to clients

12B.—(1) This regulation applies where the administrator, after setting a soft bar date, includes in the distribution plan provision for the option of setting a hard bar date.

(2) If the administrator thinks it necessary in order to expedite the return of client assets, the administrator may by a hard bar date notice set a hard bar date.

(3) The administrator may not set a hard bar date without the approval of the court given on application by the administrator.

(4) A late claim of a type described in regulation 11(1) which is submitted in response to the setting of a bar date under that regulation on or after the date on which the administrator sets a hard bar date is to be treated as a client asset claim.

(5) Where the administrator sets a hard bar date, the administrator, after that date—

- (a) must return client assets to eligible claimants;
- (b) may dispose of all client assets which the investment bank still holds after the return of client assets to any eligible claimants (“residual assets”); and
- (c) must transfer the proceeds of any disposal of residual assets to the investment bank’s own bank accounts.

(6) A person who acquires client assets on a disposal of residual assets acquires good title to them as against all clients.

(7) Where the administrator receives a client asset claim after the hard bar date (“late claim”) and—

- (a) the administrator has not made any arrangements for the disposal of the residual assets, or
- (b) such arrangements as the administrator has made for their disposal do not prevent the administrator from returning them,

the administrator must meet the late claim out of the residual assets.

(8) Where the administrator has returned client assets after setting a hard bar date and then receives a late claim in respect of assets that have been returned—

- (a) none of those assets may be recovered for the purpose of meeting the late claim; and
- (b) the person to whom the assets have been returned acquires good title to them as against the late-claiming claimant.

(9) The restrictions in paragraph (8) do not apply where—

- (a) the client assets were returned to a person by the administrator in bad faith in which that person was complicit; or
 - (b) a person to whom client assets were returned is later found to have made a false claim to them.
- (10) Where a disposal of residual assets prevents the administrator from meeting a late claim—
- (a) the claim which the late-claiming claimant has against the investment bank in consequence of the disposal ranks as an unsecured claim; and
 - (b) the value of the unsecured claim is the value of the consideration paid to the administrator for the assets disposed of which would have been returned to that claimant if their client asset claim had been made before the hard bar date.
- (11) No interest is payable on the debt for which a person makes an unsecured claim under paragraph (10).
- (12) This regulation does not apply to client money.
- (13) In this regulation—
- “client asset claim” means a claim of a type described in regulation 11(1) which is submitted in response to the setting of a hard bar date;
- “distribution plan” means the plan for the return of client assets which the administrator is required to draw up in accordance with insolvency rules after setting a soft bar date;
- “eligible claimant” means—
- (a) a person to whom the administrator has already returned client assets under regulation 11; or
 - (b) a person who—
 - (i) submits a client asset claim on or before the hard bar date; and
 - (ii) would have been eligible for a return of client assets under regulation 11 if the claim had been submitted in response to the setting of the soft bar date;
- “hard bar date” means a final date (subject to provision for late claims in paragraphs (7) to (10)) for the submission of claims of a type described in regulation 11(1);
- “hard bar date notice” means a notice which specifies a hard bar date and includes a statement that after the end of that day the administrator—
- (a) may dispose of client assets still held by the investment bank after the administrator has returned client assets to any eligible claimants; and
 - (b) may, consequently, be unable to meet any further client asset claims; and
- “soft bar date” means a bar date set under regulation 11.

Objectives 1 and 3—client money which the administrator is unable to return to clients

12C.—(1) This regulation applies where the administrator, after setting a bar date under regulation 12A, thinks it is appropriate, in order to achieve Objective 1, to close the client money pool and treat any further claim for the return of client money as an unsecured claim.

(2) The administrator may by a hard bar date notice set a hard bar date.

(3) The administrator may not set a hard bar date without the approval of the court given on application by the administrator.

(4) Where the administrator sets a hard bar date, the administrator may not meet any final money claim received after the hard bar date.

(5) A final money claim received by the administrator after the hard bar date ranks as an unsecured claim.

(6) No interest is payable on the debt for which a person makes such a claim, except interest on such part of the debt which remains after deduction of the total amount which the client would have received by way of a distribution from the client money pool if the final money claim had been received by the administrator on or before the hard bar date.

(7) In this regulation—

“final money claim” means a claim for the return of client money which is submitted in response to the setting of a hard bar date;

“eligible claimant” means a person—

- (a) to whom the administrator has already made a distribution of client money without receiving a claim for the return of client money to that person;
- (b) who has submitted a claim for the return of client money other than a final money claim; or
- (c) who submits a final money claim on or before the hard bar date;

“hard bar date” means a final date (subject to paragraph (5)) for the submission of claims for the return of client money; and

“hard bar date notice” means a notice which specifies a hard bar date and includes a statement that after the end of that day the administrator—

- (a) may, in accordance with client money rules, transfer to the investment bank’s own bank accounts any balance of the client money pool which the investment bank holds after the return of client money to eligible claimants; and
- (b) may not meet any further final money claims.

Powers of the court on application to set a hard bar date

12D.—(1) On an application under regulation 12B(3) or 12C(3) for the approval of the court to set a hard bar date the court may—

- (a) make an order approving the setting of a hard bar date;
- (b) adjourn the hearing of the application conditionally or unconditionally; or
- (c) make any other order that the court thinks appropriate.

(2) The court may make an order under paragraph (1)(a) only if—

- (a) it is satisfied that the administrator has taken all reasonable measures to identify and contact persons who may be entitled to the return of client assets; and
- (b) it considers that if a hard bar date is set there is no reasonable prospect—
 - (i) that the administrator will receive claims for the return of client assets after that date; and
 - (ii) in the case of an application under regulation 12B(3), that the administrator will receive claims of persons in relation to a security interest asserted over, or other entitlement to, client assets which are not client money.

Bar date notices—procedural requirements

12E.—(1) The persons to whom a bar date notice must be given are—

- (a) all clients of whose claim for the return of client assets the administrator is aware;
 - (b) all persons whom the administrator believes have a right to assert a security interest or other entitlement over the client assets;
 - (c) the FCA and, where the investment bank is a PRA-authorised person, the PRA; and
 - (b) in a special administration (bank administration) before the Bank of England has given an Objective A Achievement Notice, the Bank of England.
- (2) Paragraph (1) does not apply in relation to any such person whom the administrator has no means of contacting.
- (3) A bar date notice—
- (a) must be advertised once in the Gazette; and
 - (b) may be advertised in such other manner as the administrator thinks fit.
- (4) In advertising a bar date notice under paragraph (3), the administrator must aim to ensure that the notice comes to the attention of as many persons who are eligible to submit a claim for the return of client assets as the administrator considers practicable.
- (5) In this regulation—
- “Gazette” means—
- (a) in England and Wales, the London Gazette;
 - (b) in Scotland, the Edinburgh Gazette; and
 - (c) in Northern Ireland, the Belfast Gazette;
- “bar date notice” means a notice under regulation 12A(1) or a hard bar date notice under regulation 12B or 12C; and
- “Objective A Achievement Notice” has the meaning given by paragraph 3(3) of Schedule 2.

Costs of making a claim

12F.—(1) Unless the court orders otherwise, every person who submits a relevant claim bears the cost of making the claim, including costs incurred in providing documents or evidence or responding to requests for further information.

- (2) “Relevant claim” means—
- (a) a claim for the return of client assets which is submitted in response to the setting of a bar date under regulation 12A, 12B or 12C; or
 - (b) a claim in relation to a security interest asserted over, or other entitlement to, client assets, which is submitted in response to the setting of a bar date under regulation 12B.”.