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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The Financial Markets and Insolvency (Amendment  
and Transitional Provision) (EU Exit) Regulations 2019**

**PART 3**

Amendment of secondary legislation

**The 1999 Regulations**

4. The 1999 Regulations are amended in accordance with regulations 5 to 10.

**Interpretation**

- 5.—(1) Regulation 2 (interpretation) is amended as follows.
- (2) In paragraph (1)—
- (a) for the definition of “central bank” substitute—
- ““central bank” means—
- (a) the Bank of England; or
- (b) any central bank (or other monetary authority) of a country or territory outside the United Kingdom that is a central bank (or other monetary authority) of an EEA state (including the European Central Bank) or a member of the Bank for International Settlements (including the Bank for International Settlements), as may be notified by the Bank of England to the Treasury from time to time;”;
- (b) for the definition of “credit institution” substitute—
- ““credit institution” means a body corporate or unincorporated association whose head office is in the United Kingdom and whose business is to take deposits or other repayable funds from the public and to grant credits for its own account;”;
- (c) for the definition of “designated system” substitute—
- ““designated system” means—
- (a) a system which is declared by a designation order for the time being in force to be a designated system for the purposes of these Regulations; or
- (b) a system which has temporary designation in accordance with Part 4 of the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019;”;
- (d) omit the definition of “ESMA”;
- (e) in the definition of “institution”—
- (i) for sub-paragraph (aa) substitute—

- “(aa) an electronic money institution within the meaning of regulation 2(1) of the Electronic Money Regulations 2011(1);”;
- (ii) in sub-paragraph (ab) omit “, or a person whose head office, registered office or place of residence, as the case may be, is outside the United Kingdom and whose functions correspond to those of such an institution”;
- (iii) for paragraph (b) substitute—
- “(b) an investment firm as defined in Article 2.1A of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;”;
- (iv) for sub-paragraph (d), substitute—
- “(d) any undertaking whose head office, registered office or place of residence is outside the United Kingdom and whose functions correspond to those of a credit institution, an electronic money institution, an authorised payment institution, a small payment institution, or an investment firm as defined in sub-paragraphs (a), (aa), (ab), and (b) respectively above; or”;
- (f) for the definition of “securities” substitute—
- ““securities” means (except for the purposes of the definition of “charge”) any instruments referred to in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(2);”;
- (g) in the appropriate place, insert new definitions as follows—
- ““insolvency proceedings” means any collective measure provided for in the law applicable within the United Kingdom or any part of the United Kingdom, or a third country, either to wind up the participant or to reorganise it, where such measure involves the suspending of, or imposing limitations on, transfers or payments;”;
- ““system” means a formal arrangement—
- (a) between two or more participants, without counting a settlement agent, a central counterparty, a clearing house or an indirect participant, with common rules and standardised arrangements for the clearing, whether or not through a central counterparty, or execution of transfer orders between the participants; and
- (b) governed by the law of a country or territory chosen by the participants; the participants may, however, only choose the law of a country or territory in which at least one of them has its head office;”;
- ““third country” means a country or territory other than the United Kingdom;”.
- (3) In paragraph (2A)(3)—
- (a) omit “under the recovery and resolution directive”;
- (b) in sub-paragraph (a) for the words “a contract to which that undertaking is a party” substitute “the rules of the system in which the undertaking is a participant”.
- (4) In paragraph (2B)(4), omit sub-paragraph (b).
- (5) Omit paragraph (3).

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(1) S.I. 2011/99.

(2) S.I. 2001/544. Schedule 2 was substituted by S.I. 2006/3384, Part 2 article 29.

(3) Paragraph (2A) was inserted by S.I. 2014/3348.

(4) Paragraph (2B) was inserted by S.I. 2014/3348.

- (6) In paragraph (5), insert a sub-paragraph (d) as follows—
- “(d) section 121 of, and Schedule 6 to, the Financial Services (Banking Reform) Act 2013<sup>(5)</sup>.”.
- (7) Insert a new paragraph (6) as follows—
- “(6) For the purposes of these Regulations—
- (a) a reference to a system governed by the law of the United Kingdom is a reference to a system of which the governing law is the law of England and Wales, Northern Ireland, or Scotland;
  - (b) a reference to a system being designated in Gibraltar means designated under a Gibraltar law corresponding to these Regulations;
  - (c) a participant is regarded as established in the United Kingdom if its head office, registered office or place of residence is in the United Kingdom or if it has a branch in the United Kingdom (within the meaning of section 1046(3) of the Companies Act 2006)<sup>(6)</sup>.”.
- (8) After new paragraph (6) insert—
- “(7) For the purposes of sub-paragraph (b) of the definition of “central bank”, the designating authority must publish on its website a list of central banks.”.

### **Designated systems**

- 6.—(1) Omit regulation 4(6) (grant and refusal of designation).
- (2) In regulation 6 (certain bodies deemed to satisfy requirements for designation)—
- (a) in paragraph (1), omit “, an EEA central counterparty” and “, an EEA CSD”;
  - (b) in paragraph (3), omit ““EEA central counterparty” ,” and “, “EEA CSD””.
- (3) In regulation 8(1)(b) (undertakings treated as institutions), omit “and through which securities transfer orders are effected”.
- (4) Regulation 10 (provision of information by designated systems) is amended as follows—
- (a) in paragraph (1), after the first reference to “designated system” insert “governed by the law of the United Kingdom”;
  - (b) after paragraph (1), insert—
- “(1A) The system operator of a designated system governed by the law of a third country must, when that system is declared to be a designated system—
- (a) provide to the designating authority in writing a list of any participants in the designated system that are established in the United Kingdom (including any indirect participants in the designated system that are established in the United Kingdom); and
  - (b) give written notice to the designating authority of any amendment to that list within 7 days of such amendment.”;
- (c) in paragraph (4), after the first reference to “designated system” insert “governed by the law of the United Kingdom”;
  - (d) after paragraph (4A), insert—

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(5) 2013 c.33.  
(6) 2006 c.46.

“(4B) When the system operator of a designated system governed by the law of a third country amends, revokes or adds to its default arrangements, it must within 7 days give written notice to the designating authority of the amendment, revocation or addition.”;

- (e) in paragraph (5), after the first reference to “designated system” insert “governed by the law of the United Kingdom”.

### Modification of the law of insolvency

7. For regulation 13(2)(b) (modifications of the law of insolvency) substitute—

- “(b) insolvency proceedings in respect of a provider of collateral security, in so far as the proceedings affect the rights of the collateral-taker; and”.

### General

8.—(1) In regulation 20 (transfer order entered into designated system following insolvency)—

(a) after paragraph (1)(a) insert—

“(aa) the appointment of an administrator under paragraph 14 or paragraph 22 of Schedule B1 to the Insolvency Act 1986(7) has taken effect.”;

(b) in paragraphs (2)(a) and 3, after “paragraph (1)(a),” insert “(aa),”;

(c) in paragraph (4)(a), omit “, EEA central counterparty”;

(d) in paragraph (5)(a), omit “, “EEA central counterparty””.

(2) In regulation 22 (notification of insolvency order or passing of resolution for creditors’ voluntary winding up)—

(a) in paragraph (2)—

(i) in sub-paragraph (b), after “protected trust deed,” insert “or the appointment of an administrator taking effect”;

(ii) in the words following sub-paragraph (b), omit “, the Board, ESMA and other EEA states”;

(b) omit paragraph (3).

(3) In regulation 23 (applicable law relating to securities held as collateral security)—

(a) in sub-paragraph (a), for the words “a system operator”, to the end, substitute “or a system operator, in each case in a system designated for the purposes of these Regulations or designated in Gibraltar, or a central bank (including any nominee, agent or third party acting on behalf of the participant, the system operator or the central bank), and”;

(b) in paragraph (b), omit “located in an EEA State”;

(c) for the text following paragraph (b), substitute—

“the rights of that person as a holder of collateral security in relation to those securities are governed by the domestic law of the country or territory or, where appropriate, the law of the part of the country or territory, where the register, account, or centralised deposit system is maintained.”.

(4) In regulation 24 (applicable law where insolvency proceedings are brought)—

(a) for “participants” substitute “participates”;

(b) for “the Settlement Finality Directive” substitute “these Regulations or designated in Gibraltar”.

(5) In regulation 25(3) (insolvency proceedings in other jurisdictions) omit the words “or Regulation” to the end.

(6) In regulation 26 (systems designated in other EEA States and Gibraltar)—

(a) for the heading, substitute “Systems designated in Gibraltar”;

(b) for paragraph (2)(a), substitute—

“(a) “equivalent overseas order” means an order having the like effect as a transfer order which is effected through a system designated in Gibraltar and which is governed by the law of Gibraltar; and”;

(c) in paragraph (2)(b)

(i) omit the “or” in paragraph (i);

(ii) omit paragraph (ii).

### **Transitional provision for orders made before exit day**

9. After regulation 26 insert—

#### **“Applicable law for orders made and collateral provided before exit day**

27. After exit day the provisions of these Regulations as they were in force immediately before exit day continue to apply to—

(a) transfer orders entered into a designated system and collateral security provided, prior to exit day;

(b) equivalent overseas orders entered, prior to exit day, into a system designated for the purposes of the Settlement Finality Directive in an EEA state or designated in Gibraltar; and

(c) equivalent overseas security provided prior to exit day.”.

### **Amendments to the Schedule**

10. In the Schedule—

(a) omit paragraph 1(1);

(b) in paragraph 5(2), after “institution” insert “whose head office is in the United Kingdom”;

(c) in paragraph 5(3)(a), for “the Settlement Finality Directive” substitute “these Regulations”;

(d) in paragraph 5(4)—

(i) after “participant” insert “established in the United Kingdom”;

(ii) omit the “or” at the end of sub-paragraph (a);

(iii) at the end of sub-paragraph (b) insert “or” and insert a new sub-paragraph (c) as follows—

“(c) the appointment of an administrator under paragraph 14 or paragraph 22 of Schedule B1 to the Insolvency Act 1986 taking effect.”;

(e) for the text following the new sub-paragraph (c) substitute—

“to notify forthwith both the system and the designating authority that such a resolution has been passed, that such a trust deed has become a protected trust deed or, as the case may be, that such appointment has taken effect.”.

### **The Financial Markets and Insolvency Regulations 1991**

- 11.**—(1) The Financial Markets and Insolvency Regulations 1991(**8**) are amended as follows.
- (2) In regulation 7 (interpretation of Part V)(**9**) omit the definition of “EEA CSD”.
- (3) In regulation 11A (extent to which charge granted in favour of recognised CSD to be treated as market charge)(**10**)—
- (a) in the opening words of paragraph (2), for “an EEA CSD or” substitute “a”;
  - (b) in paragraphs (2)(a) and (b) omit “EEA CSD or”.

### **The Financial Collateral Arrangements (No 2) Regulations 2003**

- 12.**—(1) The Financial Collateral Arrangements (No 2) Regulations 2003(**11**) are amended as follows.
- (2) In regulation 3 (interpretation)—
- (a) in paragraph (1), omit the definition of “recovery and resolution directive”;
  - (b) in paragraph (1A)(b), omit “under the recovery and resolution directive”.
- (3) In regulation 15A(3) (insolvency proceedings in other jurisdictions)(**12**), omit the words “or Council Regulation (EC) No 44/2001” to the end of the paragraph.
- (4) In regulation 18A(2) (restrictions on enforcement of financial collateral arrangements, etc)(**13**), for the words “has the meaning given” to the end, substitute “means an arrangement under which two or more debts, claims or obligations can be set off against each other”.
- (5) In regulation 19 (standard test regarding the applicable law to book entry securities financial collateral arrangements)—
- (a) in paragraph (2), after “country” insert “, or territory, or where appropriate, the law of the part of the country or territory,”;
  - (b) in paragraph (3), after “country” insert “or territory”.

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(8) S.I. 1991/880.

(9) Definition inserted by S.I. 2017/1064 Sch.1(2) para.20(3)(b).

(10) Inserted by S.I. 2017/1064.

(11) S.I. 2003/3226. Paragraph (1A) was inserted by S.I. 2014/3348.

(12) Regulation 15A was inserted by S.I. 2010/2993.

(13) Regulation 18A was inserted by S.I. 2014/3348.