
STATUTORY INSTRUMENTS

1991 No. 880

FINANCIAL SERVICES

The Financial Markets and Insolvency Regulations 1991

Made - - - - 27th March 1991
Laid before Parliament 3rd April 1991
Coming into force - - 25th April 1991

The Secretary of State, in exercise of his powers under sections 155(4) and (5), 158(4) and (5), 160(5), 173(4) and (5), 174(2) to (4), 185, 186 and 187(3) of the Companies Act 1989⁽¹⁾ and of all other powers enabling him in that behalf, and having consulted the Treasury and the Bank of England in accordance with sections 173(6) and 174(5) of that Act, hereby makes the following Regulations:

PART I
GENERAL

Citation and commencement

1. These Regulations may be cited as the Financial Markets and Insolvency Regulations 1991 and shall come into force on 25th April 1991.

Interpretation: general

2.—(1) In these Regulations “the Act” means the Companies Act 1989.

(2) A reference in any of these Regulations to a numbered regulation shall be construed as a reference to the regulation bearing that number in these Regulations.

(3) A reference in any of these Regulations to a numbered paragraph shall, unless the reference is to a paragraph of a specified regulation, be construed as a reference to the paragraph bearing that number in the regulation in which the reference is made.

PART II

FURTHER PROVISION AS TO MARKET CONTRACTS

Further provision as to market contracts

3. For subsection (2) of section 155 of the Act (market contracts) substitute—

“(2) Except as provided in subsection (2A), in relation to a recognised investment exchange this Part applies to—

(a) contracts entered into by a member or designated non-member of the exchange which are either

(i) contracts made on the exchange or on an exchange to whose undertaking the exchange has succeeded whether by amalgamation, merger or otherwise; or

(ii) contracts in the making of which the member or designated non-member was subject to the rules of the exchange or of an exchange to whose undertaking the exchange has succeeded whether by amalgamation, merger or otherwise; and

(b) contracts subject to the rules of the exchange entered into by the exchange for the purposes of or in connection with the provision of clearing services.

A “designated non-member” means a person in respect of whom action may be taken under the default rules of the exchange but who is not a member of the exchange.

(2A) This Part does not apply to contracts falling within paragraph (a) of subsection (2) above where the exchange in question is a recognised overseas investment exchange.”

PART III

INSOLVENCY PROCEEDINGS

Voting at meetings of creditors

4.—(1) Section 159 of the Act (proceedings of exchange or clearing house take precedence over insolvency procedures) shall be amended as follows.

(2) After subsection (4) there shall be inserted the following new subsection—

“(4A) However, prior to the completion of default proceedings—

(a) where it appears to the chairman of the meeting of creditors that a sum will be certified under section 162(1) to be payable, subsection (4) shall not prevent any proof or claim including or consisting of an estimate of that sum which has been lodged or, in Scotland, submitted, from being admitted or, in Scotland, accepted, for the purpose only of determining the entitlement of a creditor to vote at a meeting of creditors; and

(b) a creditor whose claim or proof has been lodged and admitted or, in Scotland, submitted and accepted, for the purpose of determining the entitlement of a creditor to vote at a meeting of creditors and which has not been subsequently wholly withdrawn, disallowed or rejected, is eligible as a creditor to be a member of a liquidation committee or, in bankruptcy proceedings in England and Wales, a creditors' committee.”

(3) In subsection (5) for the words “subsection (4)” there shall be substituted the words “subsections (4) and (4A)”.

Ranking of expenses of relevant office-holder

5. At the end of subsection (4) of section 160 of the Act (duty to give assistance for the purposes of default proceedings) there shall be added the following words—

“and for the purpose of determining the priority in which his expenses are payable out of the assets, sums in respect of time spent shall be treated as his remuneration and other sums shall be treated as his disbursements or, in Scotland, outlays.”.

PART IV

REPORTS BY RECOGNISED OVERSEAS INVESTMENT EXCHANGE OR CLEARING HOUSE

Duty of recognised overseas investment exchange or clearing house to report on completion of default proceedings

6.—(1) Section 162 of the Act (duty to report on completion of default proceedings) shall be amended as follows.

(2) At the beginning of subsection (1) insert “Subject to subsection (1A),”.

(3) After subsection (1) insert the following new subsection—

“(1A) A recognised overseas investment exchange or recognised overseas clearing house shall not be subject to the obligation under subsection (1) unless it has been notified by the Secretary of State that a report is required for the purpose of insolvency proceedings in any part of the United Kingdom.”.

PART V

MARKET CHARGES

Interpretation of Part V

7. In this Part of these Regulations, unless the context otherwise requires—

“the Bank” means the Bank of England;

“business day” has the same meaning as in section 167(3) of the Act;

“CGO” means the Central Gilts Office of the Bank;

“CGO Service” means the computer-based system established by the Bank and The Stock Exchange to facilitate the transfer of specified securities;

“CGO Service charge” means a charge of the kind described in section 173(1)(c) of the Act;

“CGO Service member” means a person who is entitled by contract with the Bank to use the CGO Service;

“former CGO Service member” means a person whose entitlement by contract with the Bank to use the CGO Service has been terminated or suspended;

“market charge” means a charge which is a market charge for the purposes of Part VII of the Act;

“settlement bank” means a person who has agreed under a contract with the Bank to make payments of the kind mentioned in section 173(1)(c) of the Act;

“specified securities” has the meaning given in section 173(3) of the Act;
 “Talisman” means The Stock Exchange settlement system known as Talisman;
 “Talisman charge” means a charge granted in favour of The Stock Exchange over property credited to an account within Talisman maintained in the name of the chargor in respect of certain property beneficially owned by the chargor; and
 “transfer” when used in relation to specified securities has the meaning given in section 173(3) of the Act.

Charges on land or any interest in land not to be treated as market charges

8.—(1) No charge, whether fixed or floating, shall be treated as a market charge to the extent that it is a charge on land or any interest in land.

(2) For the purposes of paragraph (1), a charge on a debenture forming part of an issue or series shall not be treated as a charge on land or any interest in land by reason of the fact that the debenture is secured by a charge on land or any interest in land.

Amendments to section 173 of Act concerning certain charges granted in favour of The Stock Exchange and certain charges securing debts and liabilities arising in connection with allotment of specified securities

9. Section 173 of the Act (market charges) shall be amended—

- (a) by inserting the following paragraph after section 173(1)(a)—
 - “(aa) in favour of The Stock Exchange, for the purpose of securing debts or liabilities arising in connection with short term certificates;”;
- (b) by inserting, in section 173(1)(c), the words “or allotment” after the word “transfer” and the words “or allottee” after the word “transferee”;
- (c) by inserting “(aa),” after the words “subsection (1)(a)” in section 173(2); and
- (d) by substituting the following for the first line of section 173(3)—

“In subsection (1)—

“short term certificate” means an instrument issued by The Stock Exchange undertaking to procure the transfer of property of a value and description specified in the instrument to or to the order of the person to whom the instrument is issued or his endorsee or to a person acting on behalf of either of them and also undertaking to make appropriate payments in cash, in the event that the obligation to procure the transfer of property cannot be discharged in whole or in part;”

Extent to which charge granted in favour of recognised investment exchange to be treated as market charge

10.—(1) A charge granted in favour of a recognised investment exchange other than The Stock Exchange shall be treated as a market charge only to the extent that—

- (a) it is a charge over property provided as margin in respect of market contracts entered into by the exchange for the purposes of or in connection with the provision of clearing services;
- (b) in the case of a recognised UK investment exchange, it secures the obligation to pay to the exchange the net sum referred to in paragraph 9(2)(a) of Schedule 21 of the Act as it applies by virtue of paragraph 1(4) of that Schedule; and
- (c) in the case of a recognised overseas investment exchange, it secures the obligation to reimburse the cost (other than fees and other incidental expenses) incurred by the exchange

in settling unsettled market contracts in respect of which the charged property is provided as margin.

(2) A charge granted in favour of The Stock Exchange shall be treated as a market charge only to the extent that—

- (a) it is a charge of the kind described in paragraph (1); or
- (b) it is a Talisman charge and secures an obligation of either or both of the kinds mentioned in paragraph (3).

(3) The obligations mentioned in this paragraph are—

- (a) the obligation of the chargor to reimburse The Stock Exchange for payments (including stamp duty and taxes but excluding Stock Exchange fees and incidental expenses arising from the operation by The Stock Exchange of settlement arrangements) made by The Stock Exchange in settling, through Talisman, market contracts entered into by the chargor; and
- (b) the obligation of the chargor to reimburse The Stock Exchange the amount of any payment it has made pursuant to a short term certificate.

(4) In paragraph (3), “short term certificate” means an instrument issued by The Stock Exchange undertaking to procure the transfer of property of a value and description specified in the instrument to or to the order of the person to whom the instrument is issued or his endorsee or to a person acting on behalf of either of them and also undertaking to make appropriate payments in cash, in the event that the obligation to procure the transfer of property cannot be discharged in whole or in part.

Extent to which charge granted in favour of recognised clearinghouse to be treated as market charge

11. A charge granted in favour of a recognised clearing house shall be treated as a market charge only to the extent that—

- (a) it is a charge over property provided as margin in respect of market contracts entered into by the clearing house;
- (b) in the case of a recognised UK clearing house, it secures the obligation to pay to the clearing house the net sum referred to in paragraph 9(2)(a) of Schedule 21 to the Act; and
- (c) in the case of a recognised overseas clearing house, it secures the obligation to reimburse the cost (other than fees or other incidental expenses) incurred by the clearing house in settling unsettled market contracts in respect of which the charged property is provided as margin.

Circumstances in which CGO Service charge to be treated as market charge

12. A CGO Service charge shall be treated as a market charge only if—

- (a) it is granted to a settlement bank by a person for the purpose of securing debts or liabilities of the kind mentioned in section 173(1)(c) of the Act incurred by that person through his use of the CGO Service as a CGO Service member; and
- (b) it contains provisions which refer expressly to the CGO.

Extent to which CGO Service charge to be treated as market charge

13. A CGO Service charge shall be treated as a market charge only to the extent that—

- (a) it is a charge over any one or more of the following—
 - (i) specified securities held within the CGO Service to the account of a CGO Service member or a former CGO Service member;

- (ii) specified securities which were held as mentioned in sub-paragraph(i) above immediately prior to their being removed from the CGO Service consequent upon the person in question becoming a former CGO Service member;
 - (iii) sums receivable by a CGO Service member or former CGO Service member representing interest accrued on specified securities held within the CGO Service to his account or which were so held immediately prior to their being removed from the CGO Service consequent upon his becoming a former CGO Service member;
 - (iv) sums receivable by a CGO Service member or former CGO Service member in respect of the redemption or conversion of specified securities which were held within the CGO Service to his account at the time that the relevant securities were redeemed or converted or which were so held immediately prior to their being removed from the CGO Service consequent upon his becoming a former CGO Service member; and
 - (v) sums receivable by a CGO Service member or former CGO Service member in respect of the transfer by him of specified securities through the medium of the CGO Service; and
- (b) it secures the obligation of a CGO Service member or former CGO Service member to reimburse a settlement bank for the amount due from him to the settlement bank as a result of the settlement bank having discharged or become obliged to discharge payment obligations in respect of transfers or allotments of specified securities made to him through the medium of the CGO Service.

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

14.—(1) In this regulation “qualifying period” means the period beginning with the fifth business day before the day on which a petition for the making of an administration order in relation to the relevant CGO Service member or former CGO Service member is presented and ending with the second business day after the day on which an administration order is made in relation to the relevant CGO Service member or former CGO service member pursuant to the petition.

(2) The disapplication of sections 10(1)(b) and 11(3)(c) of the Insolvency Act 1986(2) by section 175(1)(a) of the Act shall be limited in respect of a CGO Service charge so that it has effect only to the extent necessary to enable there to be realised, whether through the sale of specified securities or otherwise, a sum equal to whichever is less of the following—

- (a) the total amount of payment obligations discharged by the settlement bank in respect of transfers and allotments of specified securities made during the qualifying period to the relevant CGO Service member or former CGO Service member through the medium of the CGO Service less the total amount of payment obligations discharged to the settlement bank in respect of transfers of specified securities made during the qualifying period by the relevant CGO Service member or former CGO Service member through the medium of the CGO Service; and
- (b) the amount (if any) described in regulation 13(b) due to the settlement bank from the relevant CGO Service member or former CGO Service member.

Ability of administrator or receiver to recover assets in case of property subject to CGO Service charge or Talisman charge

15.—(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 shall cease to have effect in respect of a charge which is either a CGO Service charge or a Talisman charge after the end of the second 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, in relation to property subject to it which—

- (a) in the case of a CGO Service charge, is not, on the basis of a valuation in accordance with paragraph (2), required for the realisation of whichever is the less of the sum referred to in regulation 14(2)(a) and the amount referred to in regulation 14(2)(b) due to the settlement bank at the close of business on the second business day referred to above; and
- (b) in the case of a Talisman charge is not, on the basis of a valuation in accordance with paragraph (2), required to enable The Stock Exchange to reimburse itself for any payment it has made of the kind referred to in regulation 10(3).

(2) For the purposes of paragraph (1) the value of property shall, except in a case falling within paragraph (3), be such as may be agreed between whichever is relevant of the administrator, administrative receiver or receiver on the one hand and the settlement bank or The Stock Exchange on the other.

(3) For the purposes of paragraph (1), the value of any investment for which a price for the second business day referred to above is quoted in the Daily Official List of The Stock Exchange shall—

- (a) in a case in which two prices are so quoted, be an amount equal to the average of those two prices, adjusted where appropriate to take account of any accrued interest; and
- (b) in a case in which one price is so quoted, be an amount equal to that price, adjusted where appropriate to take account of any accrued interest.

PART VI

CONSTRUCTION OF REFERENCES TO PARTIES TO MARKET CONTRACTS

Circumstances in which member or designated non-member dealing as principal to be treated as acting in different capacities

16.—(1) In this regulation “relevant transaction” means—

- (a) a market contract effected as principal by a member or designated non-member of a recognised investment exchange or a member of a recognised clearing house being a market contract—
 - (i) which is an investment falling within paragraph 7, 8 or 9 of Schedule 1 to the Financial Services Act 1986⁽³⁾ or falling within paragraph 11 of that Schedule insofar as that paragraph is relevant to any of those paragraphs; and
 - (ii) in relation to which money received by the member or designated non-member is client money for the purposes of the Financial Services (Clients' Money) Regulations 1987⁽⁴⁾ or would be client money for the purposes of those regulations were it not money which, in accordance with those regulations, may be regarded as immediately due and payable to the member or designated non-member for his own account; and

⁽³⁾ 1986 c. 60.

⁽⁴⁾ Regulations made by the Securities and Investments Board under section 55 of the Financial Services Act 1986 and issued (with amendments) in the Board's release No. 54. The regulations have been further modified, in an irrelevant respect, by the Financial Services (Clients' Money) (Amendment) Regulations 1990 issued in the Board's release No. 85.

(b) a market contract which would be regarded as a relevant transaction by virtue of sub-paragraph (a) above were it not for the fact that no money is received by the member or designated non-member in relation to the contract.

(2) For the purposes of subsection (1) of section 187 of the Act (construction of references to parties to market contracts) a member or designated non-member of a recognised investment exchange or a member of a recognised clearing house shall be treated as effecting relevant transactions in a different capacity from other market contracts he has effected as principal.

PART VII

ADDITIONAL REQUIREMENTS FOR RECOGNITION

Restriction of paragraph 2 of Schedule 21 to Act

17. In Schedule 21 to the Act (additional requirements for recognition) the following new sub-paragraph shall be added at the end of paragraph 2—

“(4) The reference in sub-paragraph (1) to rights and liabilities between those party as principal to unsettled market contracts does not include rights and liabilities—

- (a) in respect of margin; or
- (b) arising out of a failure to perform a market contract.”

PART VIII

LEGAL PROCEEDINGS

Applications for order under section 175(2) of Act

18. In subsection (2) of section 175 of the Act (administration orders etc), after the words “*pari passu with the market charge,*” there shall be inserted the words “*on the application of any person interested*”.

Court having jurisdiction in respect of proceedings under Part VII of Act

19.—(1) For the purposes of sections 161, 163, 164, 175(5) and 182 of the Act (various legal proceedings under Part VII of Act) “the court” shall be the court which has last heard an application in the proceedings under the Insolvency Act 1986 or the Bankruptcy (Scotland) Act 1985(5) in which the relevant office-holder is acting or, as the case may be, any court having jurisdiction to hear applications in those proceedings.

(2) For the purposes of subsection (2) of section 175 of the Act (administration orders etc), “the court” shall be the court which has made the administration order or, as the case may be, to which the petition for an administration order has been presented.

(3) The rules regulating the practice and procedure of the court in relation to applications to the court in England and Wales under sections 161, 163, 164, 175 and 182 of the Act shall be the rules applying in relation to applications to that court under the Insolvency Act 1986.

27th March 1991

John Redwood
Minister of State,
Department of Trade and Industry

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The regulations make various amendments and modifications to the provisions of Part VII of the Companies Act 1989 (“the Act”) which concerns the effects of insolvency law, and the enforcement of certain rights and remedies, on the operation of certain financial markets. One effect of Part VII of the Act is to modify the way in which insolvency law applies in relation to certain contracts defined as “market contracts”. Regulation 3 of the regulations amends the definition of “market contracts” for the purposes of Part VII. Regulations 4 and 5 make provision concerning the exercise of voting rights at meetings of creditors and the ranking, in insolvency, of expenses incurred by insolvency officeholders in providing assistance under the Part. Regulation 6 restricts the circumstances in which an overseas investment exchange or clearinghouse recognised under the Financial Services Act 1986 (c. 60) is obliged to make a report under section 162 of the Act.

Regulations 7 to 15 make various provisions as to charges which are treated as “market charges” for the purposes of Part VII of the Act. Part VII modifies the way in which market charges are treated in an administration. Regulation 8 makes provision concerning the treatment of charges on land or any interest in land. Regulation 9 provides that certain charges granted in favour of The Stock Exchange in relation to short term certificates are to be treated as market charges. Regulation 9 also extends section 173(1)(c) of the Act to cover charges granted in connection with the allotment of securities of the kind mentioned in that section. Regulations 10 and 11 contain provision as to the extent to which charges granted in favour of an investment exchange or clearinghouse recognised under the Financial Services Act 1986 are to be treated as market charges. Regulations 12 and 13 make provision as to the circumstances in which and the extent to which charges of the kind described in section 173(1)(c) (“CGO Service charges”) are to be treated as market charges. (CGO Service charges are charges granted in connection with the assured payments system connected with the Central Gilts Office of the Bank of England.) Regulation 14 limits the disapplication, by section 175(1) of the Act, of sections 10(1)(b) and 11(3)(c) of the Insolvency Act 1986 (c. 45) in relation to CGO Service charges. Regulation 15 makes provision concerning the ability of an administrator or a receiver to recover assets subject to a CGO service charge or to a limited class of charge granted in favour of The Stock Exchange.

Regulation 16 makes provision treating certain contracts effected by a person as principal as effected in a different capacity from other contracts he has effected as principal. Regulation 17 restricts the rights and liabilities which the rules of a UK investment exchange recognised under the Financial Services Act 1986 must enable to be discharged by virtue of paragraph 2 of Schedule 21 to the Act. Regulations 18 and 19 make provision as to the persons who can apply to the court for an order under section 175(2) of the Act and as to the courts which have jurisdiction to hear proceedings under Part VII of the Act.