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## STATUTORY INSTRUMENTS

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### 2003 No. 3226

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

### PART 4

#### Right of use and appropriation

##### Right of use under a security financial collateral arrangement

**16.**—(1) If a security financial collateral arrangement provides for the collateral-taker to use and dispose of any financial collateral provided under the arrangement, as if it were the owner of it, the collateral-taker may do so in accordance with the terms of the arrangement.

(2) If a collateral-taker exercises such a right of use, it is obliged to replace the original financial collateral by transferring equivalent financial collateral on or before the due date for the performance of the relevant financial obligations covered by the arrangement or, if the arrangement so provides, it may set off the value of the equivalent financial collateral against or apply it in discharge of the relevant financial obligations in accordance with the terms of the arrangement.

(3) The equivalent financial collateral which is transferred in discharge of an obligation as described in paragraph (2), shall be subject to the same terms of the security financial collateral arrangement as the original financial collateral was subject to and shall be treated as having been provided under the security financial collateral arrangement at the same time as the original financial collateral was first provided.

[<sup>F1</sup>(3A) In Scotland, paragraphs (1) and (3) apply to title transfer financial collateral arrangements as they apply to security financial collateral arrangements.]

(4) If a collateral-taker has an outstanding obligation to replace the original financial collateral with equivalent financial collateral when an enforcement event occurs, that obligation may be the subject of a close-out netting provision.

[<sup>F2</sup>(5) This regulation does not apply in relation to credit claims.]

##### Textual Amendments

- F1** Reg. 16(3A) inserted (6.4.2011) by [The Financial Markets and Insolvency \(Settlement Finality and Financial Collateral Arrangements\) \(Amendment\) Regulations 2010 \(S.I. 2010/2993\)](#), regs. 1, **4(14)(a)** (with reg. 3)
- F2** Reg. 16(5) inserted (6.4.2011) by [The Financial Markets and Insolvency \(Settlement Finality and Financial Collateral Arrangements\) \(Amendment\) Regulations 2010 \(S.I. 2010/2993\)](#), regs. 1, **4(14)(b)** (with reg. 3)

##### [<sup>F3</sup>Appropriation of financial collateral under a security financial collateral arrangement

**17.**—(1) Where a security interest is created or arises under a security financial collateral arrangement on terms that include a power for the collateral-taker to appropriate the financial collateral, the collateral-taker may exercise that power in accordance with the terms of the security

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financial collateral arrangement, without any order for foreclosure from the courts (and whether or not the remedy of foreclosure would be available).

(2) Upon the exercise by the collateral-taker of the power to appropriate the financial collateral, the equity of redemption of the collateral-provider shall be extinguished and all legal and beneficial interest of the collateral-provider in the financial collateral shall vest in the collateral taker.]

#### Textual Amendments

- F3** Reg. 17 substituted (6.4.2011) by [The Financial Markets and Insolvency \(Settlement Finality and Financial Collateral Arrangements\) \(Amendment\) Regulations 2010 \(S.I. 2010/2993\)](#), regs. 1, **4(15)** (with reg. 3)

#### Duty to value collateral and account for any difference in value on appropriation

**18.**—(1) Where a collateral-taker exercises a power contained in a security financial collateral arrangement to appropriate the financial collateral the collateral-taker must value the financial collateral in accordance with the terms of the arrangement and in any event in a commercially reasonable manner.

(2) Where a collateral-taker exercises such a power and the value of the financial collateral appropriated differs from the amount of the relevant financial obligations, then as the case may be, either—

- (a) the collateral-taker must account to the collateral-provider for the amount by which the value of the financial collateral exceeds the relevant financial obligations; or
- (b) the collateral-provider will remain liable to the collateral-taker for any amount whereby the value of the financial collateral is less than the relevant financial obligations.

#### [<sup>F4</sup>Restrictions on enforcement of financial collateral arrangements, etc.

**18A.**—(1) Nothing in regulations 16 and 17 prevents the Bank of England imposing a restriction—

- (a) on the enforcement of financial collateral arrangements, or
- (b) on the effect of a security financial collateral arrangement, close out netting provision or set-off arrangement,

in the exercise of its powers under Part 1 of the Banking Act 2009 [<sup>F5</sup>or under Schedule 11 to the Financial Services and Markets Act 2023].

(2) For the purpose of paragraph (1) “set-off arrangement” [<sup>F6</sup>means an arrangement under which two or more debts, claims or obligations can be set off against each other].]

#### Textual Amendments

- F4** Reg. 18A inserted (10.1.2015) by [The Bank Recovery and Resolution \(No. 2\) Order 2014 \(S.I. 2014/3348\)](#), art. 1(2), **Sch. 3 para. 9(4)**
- F5** Words in reg. 18A(1) inserted (31.12.2023) by [The Resolution of Central Counterparties \(Modified Application of Corporate Law and Consequential Amendments\) Regulations 2023 \(S.I. 2023/1313\)](#), regs. 1(2), **16(4)**
- F6** Words in reg. 18A(2) substituted (31.12.2020) by [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/341\)](#), regs. 1(3), **12(4)** (with reg.

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21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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**Changes and effects yet to be applied to :**

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)