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STATUTORY INSTRUMENTS

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**2009 No. 853**

**The Financial Markets and Insolvency Regulations 2009**

**Amendment of the Financial Markets and Insolvency Regulations 1991**

- 3.—(1) The Financial Markets and Insolvency Regulations 1991(1) are amended as follows.
- (2) After paragraph (1) of regulation 2 (interpretation: general), insert—
- “(1A) In these Regulations “the Recognition Requirements Regulations” means the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(2).”.
- (3) In regulation 7 (interpretation of Part V), after the definition of “CGO Service member”, insert—
- ““default fund contribution” has the same meaning as in section 188(3A) of the Act;”.
- (4) In regulation 10 (extent to which charge granted in favour of recognised investment exchange to be treated as market charge)—
- (a) at the end of paragraph (1)(a), insert “or over property provided as a default fund contribution to the exchange”; and
- (b) in paragraph (1)(b), for the words from “the net sum referred to” to the end, substitute—
- “any sum due to the exchange from a member or designated non-member of the exchange or from a recognised clearing house or from another recognised investment exchange in respect of unsettled market contracts to which the member, designated non-member, clearing house or investment exchange is a party under the rules referred to in paragraph 12 of the Schedule to the Recognition Requirements Regulations”.
- (5) In regulation 11 (extent to which charge granted in favour of recognised clearing house to be treated as market charge)—
- (a) at the end of paragraph (a), insert “or over property provided as a default fund contribution to the clearing house”; and
- (b) in paragraph (b), for “the net sum referred to in paragraph 9(2)(a) of Schedule 21 to the Act”, substitute—
- “any sum due to the clearing house from a member of the clearing house or from a recognised investment exchange or from another recognised clearing house in respect of unsettled market contracts to which the member, clearing house or investment exchange is a party under the rules referred to in paragraph 25 of the Schedule to the Recognition Requirements Regulations”.
- (6) In regulation 16 (circumstances in which member or designated non-member dealing as principal to be treated as acting in different capacities)—
- (a) for paragraph (1)(a), substitute—

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(1) S.I. 1991/880; amended by S.I. 1992/716, 1999/2109, 2001/3649 and 2006/3386.

(2) S.I. 2001/995; amended by S.I. 2005/381 and 2006/3386.

- “(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, in relation to which money received by the member or designated non-member is—
- (i) clients’ money for the purposes of rules relating to clients’ money, or
  - (ii) would be clients’ money for the purposes of those rules were it not money which, in accordance with those rules, may be regarded as immediately due and payable to the member or designated non-member for its own account; and”;
- (b) after paragraph (1) insert—
- “(1A) In addition “relevant transaction” means a market contract entered into by a recognised clearing house effected as principal in relation to which money is received by the recognised clearing house from a recognised investment exchange or from another recognised clearing house.
- (1B) In addition “relevant transaction” means a market contract entered into by a recognised investment exchange effected as principal in relation to which money is received by the recognised investment exchange from a recognised clearing house or from another recognised investment exchange.
- (1C) Where paragraph (1A) or (1B) apply paragraph (1) applies to the recognised clearing house or recognised investment exchange as it does to a member of the clearing house or investment exchange, and as if the clearing house or investment exchange were subject to the rules referred to in paragraph (1)(a)(i).
- (1D) In paragraph (1), “rules relating to clients’ money” are rules made by the Financial Services Authority, in particular, under section 138 or 139 of the Financial Services and Markets Act 2000.”;
- (c) for paragraph (2) substitute—
- “(2) For the purposes of section 187(1) of the Act (construction of references to parties to market contracts)—
- (a) a recognised investment exchange or a member or designated non-member of a recognised investment exchange, or
  - (b) a recognised clearing house or a member of a recognised clearing house,
- shall be treated as effecting relevant transactions in a different capacity from other market contracts it has effected as principal.”; and
- (d) omit paragraphs (3) and (4).