
STATUTORY INSTRUMENTS

2009 No. 853

The Financial Markets and Insolvency Regulations 2009

Amendment of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001

4.—(1) The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(1) are amended as follows.

(2) In paragraph (1) of regulation 3 (interpretation), after the definition of “credit institution”, insert—

““default fund” means the sum of the default fund contributions by the members or designated non-members of a recognised investment exchange to that exchange or by one recognised investment exchange to another or by the members of a recognised clearing house to that clearing house or by one recognised clearing house to another to the extent those contributions have not been returned or otherwise applied;

“default fund contribution” has the same meaning as in section 188(3A) of the Companies Act.”.

(3) In the Schedule—

(a) in paragraph 10 after sub-paragraph (3) insert—

“(4) Sub-paragraph (5) applies where the exchange has arrangements for transacting business with, or in relation to common members of, a recognised clearing house or another recognised investment exchange.

(5) A recognised investment exchange must have default rules which in the event of the clearing house or the investment exchange being or appearing to be unable to meet its obligations in respect of one or more market contracts, enable action to be taken in respect of unsettled market contracts to which that person is a party.”;

(b) in paragraph 12—

(i) in sub-paragraph (1) after “155(2)(b)”, insert “or (c)”;

(ii) in sub-paragraph 2(b) after “different contracts” insert “entered into by the defaulter in one capacity for the purposes of section 187 of the Companies Act”;

(iii) after sub-paragraph (2)(b), insert—

“(bb) if relevant, for that sum to be aggregated with, or set off against, any sum owed by or to the investment exchange by or to AP under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the defaulter chose to participate so as to produce a net sum.”;

(iv) for sub-paragraph (2)(c), substitute—

“(c) for the net sum referred to in paragraph (b) or, if relevant, the net sum referred to in paragraph (bb)—

- (i) if payable by the defaulter to the exchange, to be set off against—
 - (aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);
 - (bb) to the extent (if any) that any sum remains after set off under paragraph (aa), any default fund contribution provided by the defaulter remaining after any application of such contribution;
- (ii) to the extent (if any) that any sum remains after set off under paragraph (i), to be paid from such other funds, including the default fund, or resources as the exchange may apply under its default rules;
- (iii) if payable by the exchange to the defaulter, to be aggregated with—
 - (aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);
 - (bb) any default fund contribution provided by the defaulter remaining after any application of such contribution;”;
- (v) after sub-paragraph (2), insert—
 - “(2A) In sub-paragraph (2), “margin set off agreement” means an agreement between the exchange and AP permitting any eligible position to which the Participant Member is party with the exchange and any eligible position to which the Participant Member is party with AP to be taken into account in calculating a net sum owed by or to the Participant Member to either the exchange or AP and/or margin to be provided to, either or both, the exchange and AP.
 - (2B) In sub-paragraph (2)—
 - “AP” means a recognised clearing house or another recognised investment exchange of whom a Participant Member is a member;
 - “eligible position” means any position which may be included in the set off calculation;
 - “Participant Member” means a person who—
 - (a) is a member of the exchange;
 - (b) is a member or participant of AP; and
 - (c) chooses to participate, in accordance with the rules of the exchange, in such agreement.
 - (2C) The property, contribution, funds or resources referred to in paragraph (2) (c), against which the net sum is to be set off (or with which it is to be aggregated) are subject to any unsatisfied claims arising out of the default of a defaulter before the default in relation to which the calculation is being made.”;
 - (c) after paragraph 12, insert—
 - “**12A.** The rules of the exchange must provide that, in the event of a default, any default fund contribution provided by the defaulter shall only be used in accordance with paragraph 12(2)(c)(i) or (ii).”;
 - (d) in paragraph 14 at the end insert—
 - “or the default of a recognised clearing house or another recognised investment exchange”;

- (e) in paragraph 15(1), at the end insert, “other than a client account of the defaulter.”;
- (f) after paragraph 15(2), insert—
 - “(3) For the purposes of this paragraph, “client account of the defaulter” means an account held by the exchange in the name of the defaulter in which relevant transactions effected by the defaulter have been recorded.
 - (4) In sub-paragraph (3) “relevant transaction” has the same meaning as in regulation 16(1) of the Financial Markets and Insolvency Regulations 1991.”;
- (g) in paragraph 24 after sub-paragraph (2) insert—
 - “(3) Sub-paragraph (4) applies where the clearing house has arrangements for transacting business with, or in relation to common members of, a recognised investment exchange or another recognised clearing house.
 - (4) A recognised clearing house must have default rules which in the event of the investment exchange or the clearing house being or appearing to be unable to meet its obligations in respect of one or more market contracts, enable action to be taken in respect of unsettled market contracts to which that person is a party.”;
- (h) in paragraph 25—
 - (i) in sub-paragraph (1)(b), after “different contracts” insert “entered into by the defaulter in one capacity for the purposes of section 187 of the Companies Act”;
 - (ii) after sub-paragraph (1)(b), insert—
 - “(bb) if relevant, for that sum to be aggregated with, or set off against, any sum owed by or to the clearing house by or to AP under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the defaulter chose to participate so as to produce a net sum.”;
 - (iii) for sub-paragraph (1)(c), substitute—
 - “(c) for the net sum referred to in paragraph (b) or, if relevant, the net sum referred to in paragraph (bb)—
 - (i) if payable by the defaulter to the clearing house, to be set off against—
 - (aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);
 - (bb) to the extent (if any) that any sum remains after set off under paragraph (aa), any default fund contribution provided by the defaulter remaining after any application of such contribution;
 - (ii) to the extent (if any) that any sum remains after set off under paragraph (i), to be paid from such other funds, including the default fund, or resources as the clearing house may apply under its default rules;
 - (iii) if payable by the clearing house to the defaulter, to be aggregated with—
 - (aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);

(bb) any default fund contribution provided by the defaulter remaining after any application of such contribution; and”;
and

(iv) after sub-paragraph (1), insert—

“(1A) In sub-paragraph (1), “margin set off agreement” means an agreement between the clearing house and AP permitting any eligible position to which the Participant Member is party with the clearing house and any eligible position to which the Participant Member is party with AP to be taken into account in calculating a net sum owed by or to the Participant Member to or by either the clearing house or AP and/or margin to be provided to, either or both, the clearing house and AP.

(1B) In sub-paragraph (1A)—

“AP” means a recognised investment exchange or another recognised clearing house of whom a Participant Member is a member;

“eligible position” means any position which may be included in the set off calculation;

“Participant Member” means a person who—

- (a) is a member of the clearing house;
- (b) is a member or participant of AP; and
- (c) chooses to participate, in accordance with the rules of the clearing house, in such agreement.

(1C) The property, contribution, funds or resources referred to in paragraph (1) (c), against which the net sum is to be set off (or with which it is to be aggregated) are subject to any unsatisfied claims arising out of the default of a defaulter before the default in relation to which the calculation is being made.”;

(i) after paragraph 25, insert—

“**25A.** The rules of the clearing house must provide that in the event of a default, any default fund contribution provided by the defaulter shall only be used in accordance with paragraph 25(1)(c)(i) or (ii).”;

(j) in paragraph 27 at the end insert—

“or the default of a recognised investment exchange or another recognised clearing house”;

(k) in paragraph 28(1), at the end insert, “other than a client account of the defaulter.”; and

(l) after paragraph 28(2), insert—

“(3) For the purposes of this paragraph, “client account of the defaulter” means an account held by the clearing house in the name of the defaulter in which relevant transactions effected by the defaulter have been recorded.

(4) In sub-paragraph (3) “relevant transaction” has the same meaning as in regulation 16(1) of the Financial Markets and Insolvency Regulations 1991.”.