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STATUTORY INSTRUMENTS

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**2010 No. 2993**

**The Financial Markets and Insolvency  
(Settlement Finality and Financial Collateral  
Arrangements) (Amendment) Regulations 2010**

**Amendment of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999**

2.—(1) The Financial Markets and Insolvency (Settlement Finality) Regulations 1999(1) are amended as follows.

(2) In regulation 2(1)—

(a) insert each of the following definitions at the appropriate place—

““business day” shall cover both day and night-time settlements and shall encompass all events happening during the business cycle of a system;”

““credit claims” means pecuniary claims arising out of an agreement whereby a credit institution grants credit in the form of a loan;”

““interoperable system” in relation to a system (“the first system”), means a second system whose system operator has entered into an arrangement with the system operator of the first system that involves cross-system execution of transfer orders;”

““system operator” means the entity or entities legally responsible for the operation of a system. A system operator may also act as a settlement agent, central counterparty or clearing house;”;

(b) in the definition of “central counterparty”, omit “designated”;

(c) in the definition of “clearing house”, omit “designated”;

(d) in the definition of “collateral security”—

(i) after “including” insert “credit claims and”;

(ii) in sub-paragraph (a), omit “designated” both times it occurs;

(e) in the definition of “credit institution” for “Article 4(1)(a)” substitute “Article 4(1)”;

(f) in the definition of “default arrangements”—

(i) after “designated system” insert “or by a system which is an interoperable system in relation to that system”; and

(ii) after “participant” insert “or a system operator of an interoperable system”;

(g) for the definition of “indirect participant” substitute—

““indirect participant” means an institution, central counterparty, settlement agent, clearing house or system operator—

(a) which has a contractual relationship with a participant in a designated system that enables the indirect participant to effect transfer orders through that system, and

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(1) S.I. 1999/2979, amended by S.I. 2001/3929, 2002/1555, 2003/2096, 2006/50, 2006/3221, 2007/832, 2007/108, 2007/126, 2007/1655, 2009/1972.

- (b) the identity of which is known to the system operator;”;
- (h) in the definition of “institution”—
  - (i) insert after sub-paragraph (a)—
    - “(aa) an electronic money institution within the meaning of Article 2.1 of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC(2);”;
    - (ii) omit the word “designated”;
  - (i) in the definition of “participant”, after sub-paragraph (a), insert—
    - “(aa) a system operator;”;
  - (j) in the definition of “relevant office-holder”—
    - (i) at the end of paragraph (c), omit “or”;
    - (ii) at the end of paragraph (d), insert “or”;
    - (iii) after paragraph (d), insert—
      - “(e) any person appointed pursuant to insolvency proceedings of a country or territory outside the United Kingdom;”;
  - (k) in the definition of “settlement account” omit “designated”;
  - (l) in the definition of “settlement agent”, omit “designated”;
  - (m) in the definition of “the Settlement Finality Directive” insert at the end “as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims(3);”;
  - (n) in the definition of “transfer order” after “a central bank” insert “, a central counterparty”;
  - (o) for the definition of “winding-up”, substitute—
    - ““winding-up” means—
      - (a) winding up by the court or creditors’ voluntary winding up within the meaning of the Insolvency Act 1986(4) or the Insolvency (Northern Ireland) Order 1989(5) (but does not include members’ voluntary winding up within the meaning of that Act or that Order);
      - (b) sequestration of a Scottish partnership under the Bankruptcy (Scotland) Act 1985(6);
      - (c) bank insolvency within the meaning of the Banking Act 2009(7).”.
- (3) In regulation 4(1), after “designated system” insert “and identifying the system operator of that system”.
- (4) In regulation 5—
  - (a) in paragraph (2), after “charge” insert “the system operator of”;
  - (b) in paragraph (3)(b)—

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(2) OJ L 267, 10.10.2009, p7.

(3) OJ L 146, 10.6.2009, p37.

(4) 1986 c. 45.

(5) S.I. 1989/2405 (N.I. 19).

(6) 1985 c. 66.

(7) 2009 c. 1.

- (i) for “system continues” substitute “system and its system operator continue”;
  - (ii) for “is complying” substitute “are complying”;
  - (iii) for “it is subject” substitute “they are subject”.
- (5) In regulation 7(1)(b)—
- (a) after “the system” insert “or the system operator of that system”;
  - (b) for “it is subject” substitute “they are subject”.
- (6) In regulation 7(4), after “consent of the” insert “system operator of the”.
- (7) In regulation 8(2) insert at the end “and to the system operator of that system”.
- (8) In regulation 9—
- (a) in paragraph (1), after “to the designated system” insert “and to the system operator of that system”;
  - (b) after paragraph (1), insert—
    - “(2) Where a designating authority, in accordance with paragraph (1), treats an indirect participant as a participant in a designated system, the liability of the participant through which that indirect participant passes transfer orders to the designated system is not affected.”.
- (9) In regulation 10—
- (a) for paragraph (1), substitute—
    - “(1) The system operator of a designated system shall, when that system is declared to be a designated system, provide to the designating authority in writing a list of the participants (including the indirect participants) in the designated system and shall give written notice to the designating authority of any amendment to the list within seven days of such amendment.”;
  - (b) in paragraphs (2), (3), (4) and (5), for “a designated system” in each place where it occurs substitute “the system operator of a designated system”.
- (10) In regulation 13—
- (a) for paragraph (2)(a), substitute—
    - “(a) insolvency proceedings in respect of a participant in a designated system, or of a participant in a system which is an interoperable system in relation to that designated system;”;
  - (b) at the end of paragraph (2)(b), insert “and”;
  - (c) after paragraph (2)(b), insert—
    - “(c) insolvency proceedings in respect of a system operator of a designated system or of a system which is an interoperable system in relation to that designated system;”;
  - (d) after paragraph (3), insert—
    - “(4) References in this Part to “insolvency proceedings” shall include—
      - (a) bank insolvency under Part 2 of the Banking Act 2009; and
      - (b) bank administration under Part 3 of the Banking Act 2009;”.
- (11) In regulation 14—
- (a) in paragraph (1), after “insolvent estate” insert “or with the law relating to other insolvency proceedings of a country or territory outside the United Kingdom”;

- (b) in paragraph (1)(d), after “designated system” insert “or in a system which is an interoperable system in relation to that designated system”;
- (c) in paragraph (2)(b) for “its default arrangements” substitute “the default arrangements of a designated system”;
- (d) in paragraph (2)(c), after “designated system” insert “or in a system which is an interoperable system in relation to that designated system”;
- (e) for paragraph (5)(a)(iv), substitute—
  - “(iv) paragraph 100(3) of Schedule B1 to the Insolvency (Northern Ireland) Order 1989, Article 31(4) of that Order, as it has effect by virtue of Article 4(1) of the Insolvency (Northern Ireland) Order 2005, and Article 50 of the Insolvency (Northern Ireland) Order 1989; and”;
- (f) in paragraph (5)(a)(v) after “2006” insert “(including that section as applied or modified by any enactment made under the Banking Act 2009)”;
- (g) in paragraph (6), after “participant” insert “, system operator”.
- (12) In regulation 15(1), after “default arrangements” insert “of a designated system”.
- (13) In regulation 20—
  - (i) in paragraph (1)(a), for “in respect of that participant” substitute—
    - “in respect of—
    - (i) that participant;
    - (ii) a participant in a system which is an interoperable system in relation to the designated system; or
    - (iii) a system operator which is not a participant in the designated system, or”;
  - (b) in paragraph (1)(b) and (c), after “that participant” insert “, a participant in a system which is an interoperable system in relation to the designated system or a system operator of that designated system”;
  - (c) in paragraph (2)—
    - (i) in sub-paragraph (a), for “same day” substitute “same business day of the designated system”;
    - (ii) in sub-paragraph (b)—
      - (aa) for “the settlement agent, the central counterparty or the clearing house” substitute “the system operator”;
      - (bb) for “the time of settlement of the transfer order” substitute “the time the transfer order became irrevocable”;
    - (d) in paragraph (3), for “the relevant settlement agent, central counterparty or clearing house” substitute “the relevant system operator”.
- (14) In regulation 22(1), for “the system” substitute “the system operator of that designated system”.
- (15) In regulation 23(a)—
  - (a) after “a participant” insert “, a system operator”;
  - (b) after “the participant” insert “, the system operator”.
- (16) In regulation 26—
  - (a) in paragraph (1)(b), omit “in connection with a designated system”;
  - (b) for paragraph (2)(b), substitute—

- “(b) “equivalent overseas security” means any realisable assets provided under a charge or a repurchase or similar agreement, or otherwise (including credit claims and money provided under a charge)—
- (i) for the purpose of securing rights and obligations potentially arising in connection with such a system, or
  - (ii) to a central bank for the purpose of securing rights and obligations in connection with its operations in carrying out its functions as a central bank.”.

(17) In the Schedule—

- (a) in paragraph 1, insert at the end—

“(5) An arrangement entered into between interoperable systems shall not constitute a system.”;

- (b) in paragraph 3, for “system” in both places where it occurs, substitute “system operator”;

- (c) in paragraph 4, for “the system”, substitute “the system operator”;

- (d) in paragraph 5, after sub-paragraph (1), insert—

“(1A) Where the system has one or more interoperable systems, the rules required under paragraph (1)(a) and (b) shall, as far as possible, be co-ordinated with the rules of those interoperable systems.

(1B) The rules of the system which are referred to in paragraph (1)(a) and (b) shall not be affected by any rules of that system’s interoperable systems in the absence of express provision in the rules of the system and all of those interoperable systems.”.