
STATUTORY INSTRUMENTS

2013 No. 504

**The Financial Services and Markets Act 2000 (Over
the Counter Derivatives, Central Counterparties
and Trade Repositories) Regulations 2013**

PART 4

**Amendments to the Financial Services and Markets Act 2000 (Recognition
Requirements for Investment Exchanges and Clearing Houses) Regulations 2001**

**Amendments to the Financial Services and Markets Act 2000 (Recognition Requirements for
Investment Exchanges and Clearing Houses) Regulations 2001**

5.—(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 regulation 3—

(a) in paragraph (1)(2)—

(i) omit—

““central counterparty”, “clearing” and “settlement” have the same meaning as in the markets in financial instruments directive;”;

(ii) in the definition of “exempt activities” for “section 285(2) or (3)” substitute “any of subsections (2) to (3A) of section 285”;

(iii) insert in the appropriate place—

““settlement” has the same meaning as in the markets in financial instruments directive;”;

(b) after paragraph (1) insert—

“(1A) In Part 1 of the Schedule, in paragraph 21A in Part 3 of the Schedule(3) and in paragraph 31 in Part 5 of the Schedule, “clearing” has the same meaning as in the markets in financial instruments directive.”.

(3) In regulation 5—

(a) in the heading, after “clearing houses” insert “which are not central counterparties”;

(b) for “section 290(1)(b)” substitute “section 290(1)(c)”;

(c) for “section 288” substitute “section 288(1A)”.

(4) After regulation 5 insert—

(1) [S.I. 2001/995](#).

(2) In regulation 3(1), the definitions of “central counterparty”, “clearing” and “settlement” were inserted by [S.I. 2006/3386](#).

(3) Paragraph 21A of the Schedule was inserted by [S.I. 2006/3386](#).

“Recognition requirements for central counterparties

5A. Parts 5 and 6 of the Schedule set out recognition requirements applying to bodies in respect of which a recognition order has been made under section 290(1)(b) of the Act, or which have applied for such an order under section 288(1) of the Act.”.

- (5) In paragraph 21A(1) in Part 3 of the Schedule omit “central counterparty,”.
- (6) After Part 4 of the Schedule insert—

“PART 5

Recognition requirements for central counterparties

Requirements of the EMIR regulation

29. A central counterparty providing clearing services must meet the requirements set out in the EMIR regulation (within the meaning of section 313 of the Act).

Market abuse or financial crime

30. The central counterparty must ensure that appropriate measures are adopted to reduce the extent to which its facilities can be used for a purpose connected with market abuse or financial crime, and to facilitate their detection and monitor their incidence.

Access to central counterparty, clearing and settlement facilities

31.—(1) The central counterparty must make transparent and non-discriminatory rules, based on objective criteria, governing access to central counterparty, clearing or settlement facilities provided by it.

(2) The rules under sub-paragraph (1) must enable an investment firm or a credit institution authorised by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have access to those facilities on the same terms as a UK firm for the purposes of finalising or arranging the finalisation of transactions in financial instruments.

(3) The central counterparty may refuse access to those facilities on legitimate commercial grounds.

PART 6

Recognition requirements applying to central counterparties: default rules

Introduction

32. This Part sets out recognition requirements which apply to the default rules of a central counterparty.

Interpretation

33. In this Part—

- (a) “assets” has the meaning given by Article 39(10) of the EMIR Level 1 Regulation;

- (b) “clearing member” has the meaning given by Article 2(14) of the EMIR Level 1 Regulation;
- (c) “client” has the meaning given by section 190(1) of the Companies Act 1989(4);
- (d) “default rules” has the meaning given by section 188(1) of the Companies Act 1989(5);
- (e) “defaulting” has the meaning given by section 188(2) of the Companies Act 1989;
- (f) “EMIR Level 1 Regulation” means Regulation (EU) No 648/2012 of 4 July 2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;
- (g) “indirect client” has the meaning given by section 190(1) of the Companies Act 1989;
- (h) “position” has the has the meaning given by section 190(1) of the Companies Act 1989.

Portability of accounts: default rules going beyond requirements of EMIR

- 34.**—(1) Sub-paragraph (2) applies to any provisions of the default rules which—
- (a) provide for the transfer of the positions or assets of a defaulting clearing member;
 - (b) are not necessary for the purposes of complying with the minimum requirements of Articles 48(5) and (6) of the EMIR Level 1 Regulation; and
 - (c) may be relevant to a question falling to be determined in accordance with the law of a part of the United Kingdom.
- (2) Where this sub-paragraph applies to any provisions of the default rules, the default rules must—
- (a) include a summary of how a transfer under the provisions will work and its main legal implications (including information on the applicable insolvency law in the relevant jurisdictions), or a clear and prominent reference to the place where such a summary can be directly and easily accessed by the public;
 - (b) ensure that a position or asset cannot be transferred under the provisions without the consent of—
 - (i) the person for whose account the position or asset is held; and
 - (ii) the clearing member to whom the position or asset is transferred;
 - (c) ensure that any transfer under the provisions is fair to clients and indirect clients; and
 - (d) specify a pre-defined transfer period within which a transfer under the provisions must take place.
- (3) For the purposes of sub-paragraph (2)(a), a clear and prominent reference to a place where a summary can be directly and easily accessed by the public may be provided by way of a direct internet link to an appropriate internet site.
- (4) For the purposes of sub-paragraph (2)(b), consent may be given in advance of a default (such as by means of suitable provision in the default rules).

(4) The definitions of “client”, “indirect client” and “position” in section 190(1) were inserted by regulation 4(18)(a) of these regulations.

(5) Section 188(1) was amended by S.I. 2009/853 and by regulation 4(17)(a) of these regulations; section 188(2) was amended by regulation 4(17)(b) of these regulations.

Liquidation of accounts

35. The default rules must contain provision ensuring that, after the liquidation of an account and the return of any collateral to clients or to a clearing member for the account of the clearing member's clients, the amount of any other net sum payable or, as the case may be, the fact that no other net sum is payable, in respect of that account will be certified for the purposes of section 163 of the Companies Act 1989⁽⁶⁾.”.

⁽⁶⁾ Section 163 was amended by [S.I. 2009/853](#).