EXPLANATORY NOTE

(This note is not part of these Rules)

These Rules give effect to Part 6 of the Financial Services (Banking Reform) Act 2013 (c. 33) ("the 2013 Act"). Part 6 provides for a special process for the administration of operators of certain financial market infrastructure systems (known as "FMI administration"), and restricts the powers of persons other than the Bank of England in relation to the insolvency of infrastructure companies. These Rules set out the procedure for FMI administration.

These Rules are to come into force on 4th August 2018.

An infrastructure company is—

- the operator of a recognised payment system (other than a recognised central counterparty as defined by section 285 of the Financial Services and Markets Act 2000 (c. 8));
- a recognised CSD operating a securities settlement system (this definition of an infrastructure company was inserted by the Central Securities Depositories Regulations 2017 (S.I. 2017/1064) and is subject to the saving provision set out in regulation 7(3)(b) of S.I. 2017/1064); or
- a company which provides services to an operator of either description and is designated by the Treasury, the Treasury being satisfied that an interruption in the provision of those services would have a serious adverse effect on the effective operation of the recognised payment system or securities settlement system in question.

The main features of FMI administration are that—

(a) the High Court appoints the FMI administrator by order on the application of the Bank of England;

(b) the High Court may make an FMI administration order if satisfied—

(i) that the infrastructure company is unable, or likely to be unable, to pay its debts; or

(ii) that it would be just and equitable to wind up the infrastructure company on a petition presented by the Secretary of State for winding up on grounds of public interest;

(c) the FMI administrator must manage the affairs, business and property of the infrastructure company, and exercise and perform the FMI administrator's functions, so as to achieve the objective in section 115 of the 2013 Act;

(d) in the case of the operator of a recognised payment system or a securities settlement system, that objective includes ensuring that the system is and continues to be maintained and operated as an efficient and effective system;

(e) in the case of a designated company (which provides services to such an operator), that objective includes ensuring that the services continue to be provided;

(f) the means of achieving the objective are rescue of the infrastructure company as a going concern or transfer as a going concern of so much of the infrastructure company as it is appropriate to transfer for the purpose of achieving the objective; and

(g) in other respects the process is the same as for normal company administration, and for that purpose specified provisions of Schedule B1 to the Insolvency Act 1986 (c. 45) are applied with modifications.

Part 2 of these Rules sets out the procedure for making an application for an FMI administration order.

Part 3 of these Rules sets out further procedure for FMI administration by applying specified provisions of the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024) with general and specific modifications.

Part 4 of these Rules requires the Lord Chancellor to review these Rules within 5 years after they come into force.

A full regulatory impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.