

2023 No. 1195

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2023 (Resolution of Central Counterparties: Calculation of Maximum Amounts for Cash Calls and Use of Specified Funds) Regulations 2023

<i>Made</i> - - - -	<i>8th November 2023</i>
<i>Laid before Parliament</i>	<i>9th November 2023</i>
<i>Coming into force</i> - -	<i>31st December 2023</i>

The Treasury make these Regulations in exercise of the powers conferred by section 84(2) of, and paragraph 32(3) of Schedule 11 to, the Financial Services and Markets Act 2023(a).

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2023 (Resolution of Central Counterparties: Calculation of Maximum Amounts for Cash Calls and Use of Specified Funds) Regulations 2023.

(2) These Regulations come into force on 31st December 2023.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(4) In these Regulations—

“contribution” means the sum of money a clearing member(b) is required to pay to the CCP(c) that is attributed to a prefunded default fund;

“default loss” means loss incurred by the CCP arising as a result of a clearing member defaulting on its obligations to the CCP;

“excess collateral” means any collateral held by the CCP in the name of a clearing member in excess of the collateral which that clearing member is required by the CCP to place with the CCP;

“non-default loss” means loss incurred by the CCP arising otherwise than as a result of a clearing member defaulting on its obligations to the CCP;

“prefunded default fund” means a default fund that is maintained by the CCP under Article 42(1) of EMIR(d) in relation to a particular class, or to particular classes, of instruments;

“relevant prefunded default fund” means the prefunded default fund which the CCP maintains in relation to the class, or classes, of instruments to which the default loss relates;

“specified funds” means any of the following types of funds held by the CCP—

(a) 2023 c. 29.

(b) “clearing member” has the meaning given in paragraph 154 of Schedule 11 to the Financial Services and Markets Act 2023 (c. 29) (interpretation).

(c) “CCP” has the meaning given in paragraph 154 of Schedule 11 to the Financial Services and Markets Act 2023.

(d) “EMIR” has the meaning given in paragraph 154 of Schedule 11 to the Financial Services and Markets Act 2023.

- (a) money which was paid to the CCP by a clearing member to cover the CCP's potential future exposure in the event of default by that clearing member;
- (b) money which was paid to the CCP as a contribution to a prefunded default fund by a clearing member; or
- (c) money which, at the end of the period for payment specified in the cash call instrument, is excess collateral held by the CCP in the name of a clearing member.

Maximum amount of cash – default loss

2.—(1) Where a CCP has incurred default loss that relates to a class or classes of instruments, in respect of which the CCP maintains one prefunded default fund, the maximum amount of cash that may be specified in relation to a clearing member is two times that clearing member's contribution to the relevant prefunded default fund.

(2) Where a CCP has incurred default loss that relates to a class or classes of instruments, in respect of which the CCP maintains more than one prefunded default fund, the maximum amount of cash that may be specified in relation to a clearing member ("C") is two times C's contribution to each relevant prefunded default fund.

(3) The maximum amount in paragraph (2) must be calculated separately in relation to each prefunded default fund to which C is required to contribute.

(4) It is irrelevant—

- (a) for the purposes of a calculation under paragraph (2), whether the maximum amount under paragraph (2) has been specified in relation to C's contributions to another prefunded default fund; or
- (b) for the purposes of a calculation under either paragraph (1) or paragraph (2), whether the maximum amount as calculated under regulation 3(1) has been specified.

(5) In this regulation, "specified" means either the amount specified in a cash call instrument, or the cumulative amount specified in multiple cash call instruments, as applicable.

Maximum amount of cash – non-default loss

3.—(1) Where a CCP has incurred non-default loss, the maximum amount of cash that may be specified in relation to a clearing member is three times that clearing member's contributions to all prefunded default funds.

(2) It is irrelevant for the purpose of a calculation under paragraph (1) whether any maximum amount as calculated under regulation 2(1) or (2) has been specified.

(3) In this regulation, "specified" has the same meaning as in regulation 2(5).

Maximum amounts - application to further resolutions

4. If there is more than one resolution in relation to a CCP, the maximum amounts set out in these Regulations apply separately to each resolution.

Use of specified funds

5.—(1) If a clearing member fails to satisfy its obligations under a cash call instrument, whether in full or in part, the Bank may require the CCP to use one or more specified funds of the clearing member to satisfy all or part of that clearing member's obligations.

(2) A requirement under paragraph (1) may—

- (a) specify which type, or types, of specified funds must be used;

- (b) specify the order in which any specified funds must be used;
- (c) provide that the CCP has discretion as to which specified funds to use.

*Andrew Stephenson
Steve Double*

8th November 2023

Two of the Lords Commissioners of His Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision relating to the use by the Bank of England (“the Bank”) of cash call instruments, as provided for in paragraph 32 of Schedule 11 to the Financial Services and Markets Act 2023 (c. 29) (cash call power), in relation to the clearing members of a central counterparty (“CCP”) which is in resolution. The Bank’s cash call power enables the Bank to make cash call instruments requiring one or more clearing members of a CCP to pay an amount in cash to the CCP. The Bank can require any clearing member to make a payment under a cash call instrument, whether or not that clearing member caused or contributed to any loss incurred by the CCP. Under paragraph 32(3) of Schedule 11, the Treasury may make regulations containing provision for calculating the maximum cash amount that may be specified for the purposes of the cash call power, and to specify circumstances in which the Bank may require a CCP to use specified funds of specified clearing members to satisfy all or part of that member’s obligations under a cash call instrument.

Regulation 2 specifies the maximum amount of cash that a clearing member may be required to pay to a CCP under cash call instruments made where a CCP has incurred default loss (as defined in regulation 1(4)). The maximum amount is calculated by reference to the contributions made by a clearing member to prefunded default funds maintained by the CCP (“prefunded default fund” is defined in regulation 1(4)). A clearing member may be required to pay up to two times the amount of its contributions to the prefunded default fund maintained by the CCP in relation to the class, or classes, of instruments to which the loss relates (being the “relevant prefunded default fund”, as defined in regulation 1(4)). If there is more than one relevant prefunded default fund, regulation 2(3) provides that this limit is to be calculated separately in relation to each prefunded default fund to which the clearing member is required to contribute.

Regulation 3 specifies the maximum amount of cash that may be specified in cash call instruments which are made in circumstances where the CCP has incurred any other loss (“non-default loss”, as defined in regulation 1(4)), for example, due to an operational event. A clearing member may be required to pay up to three times the amount of its contributions to all prefunded default funds maintained by the CCP.

Regulation 4 provides that, if there should be more than one resolution in respect of the CCP, the maximum amounts set out in these Regulations apply separately to each resolution.

Regulation 5 specifies the circumstances in which the Bank may require that certain funds (“specified funds”, as defined in regulation 1(4)) held by the CCP are to be used to meet the obligations imposed on a clearing member under a cash call instrument, if a clearing member fails to comply with its obligations under that cash call instrument. Regulation 5(2) provides that the Bank may specify the type (or types) of specified funds that are to be used, the order in which they are to be used, or provide that the CCP has discretion as to which funds are to be used.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. A de minimis impact assessment is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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