
STATUTORY INSTRUMENTS

2023 No. 1316

The Financial Services and Markets Act 2023 (Resolution of Central Counterparties: Partial Property Transfers and Safeguarding of Protected Arrangements) Regulations 2023

PART 2

Partial Property Transfers

CHAPTER 1

Restrictions on Partial Property Transfers

Application of this Part

2.—(1) Regulations 3 to 11 apply in the following cases.

(2) Case 1 is where a partial property transfer⁽¹⁾ has been made by the Bank⁽²⁾ in accordance with paragraph 27(2) (private sector purchaser) or 29(3) (bridge central counterparty) of the Schedule.

(3) Case 2 is where the Bank has made—

- (a) a property transfer instrument⁽³⁾ in accordance with paragraph 27(2) or 29(3) of the Schedule (whether or not that instrument is a partial property transfer); and
- (b) a property transfer instrument under paragraph 67 (supplemental instruments), 68 (private sector purchaser: reverse property transfer), 69 (onward transfer) or 70 (bridge central counterparties: reverse property transfer) of the Schedule which is a partial property transfer.

(4) Case 3 is where the Bank has made—

- (a) a share transfer instrument⁽⁴⁾ in accordance with paragraph 30(2) of the Schedule (transfer of ownership); and
- (b) a property transfer instrument under paragraph 71 (transfer of ownership and private sector purchaser: property transfer) or 72 (transfer of ownership: reverse property transfer) of the Schedule.

(5) For the purposes of this Part, a property transfer instrument which purports to transfer all of the property, rights or liabilities of a CCP⁽⁵⁾ must be treated as having done so effectively (and so must not be treated as a partial property transfer), notwithstanding the possibility that any of the

(1) “Partial property transfer” is defined in paragraph 75 of Schedule 11 to the Financial Services and Markets Act 2023 (restriction of partial transfers).
(2) “Bank” is defined in paragraph 154 of Schedule 11 to the Financial Services and Markets Act 2023 (c. 29) (interpretation).
(3) “Property transfer instrument” is defined in paragraph 54 of Schedule 11 to the Financial Services and Markets Act 2023 (property transfer instruments).
(4) “Share transfer instrument” is defined in paragraph 41 of Schedule 11 to the Financial Services and Markets Act 2023 (share transfer instruments).
(5) “CCP” is defined in paragraph 154 of Schedule 11 to the Financial Services and Markets Act 2023 (interpretation).

property, rights or liabilities are foreign and may not have been effectively transferred by the property transfer instrument by virtue of steps taken under paragraph 62 of the Schedule (foreign property).

Protected rights and liabilities

3.—(1) A partial property transfer to which this Part applies may not provide for the transfer of some, but not all, of the protected rights and liabilities between a person (“P”) and a CCP.

(2) A partial property transfer to which this Part applies may not include provision under the continuity powers which terminates or modifies the protected rights or liabilities between P and a CCP.

(3) For the purposes of paragraphs (1) and (2), rights and liabilities between P and a CCP are protected if either paragraph (4) or paragraph (5) applies.

(4) This paragraph applies where—

- (a) the CCP has established a separate default fund for a particular class or classes of financial instruments in accordance with Article 42(4) of the EMIR Regulation; and
- (b) the rights and liabilities—
 - (i) are recorded in the accounts of the CCP as positions in the class or classes of financial instruments referred to in sub-paragraph (a) or as assets held to cover those positions; or
 - (ii) arise out of the clearing member’s (6) contributions to the separate default fund referred to in sub-paragraph (a).

(5) This paragraph applies where—

- (a) the CCP has established a single default fund in accordance with Article 42 of the EMIR regulation; and
- (b) the rights and liabilities—
 - (i) are recorded in the accounts of the CCP; or
 - (ii) arise out of the clearing member’s contributions to the single default fund referred to in sub-paragraph (a).

(6) For the purposes of paragraph (1), a property transfer instrument which purports to transfer all of the protected rights and liabilities between P and a CCP must be treated as having done so effectively (and so not give rise to a contravention of paragraph (1)), notwithstanding the possibility that any of the protected rights or liabilities are foreign property and may not have effectively been transferred by the property transfer instrument or by virtue of steps taken under paragraph 62 of the Schedule.

Secured liabilities

4.—(1) Paragraph (2) applies where an arrangement has been entered into under which one party owes a liability to the other and that liability is secured against property or rights; and it is immaterial that—

- (a) the liability is secured against all or substantially all of the property or rights of a person;
- (b) the liability is secured against specified property or rights; or
- (c) the property or rights against which the liability is secured are not owned by the person who owes the liability.

(2) A partial property transfer to which this Part applies may not—

(6) “Clearing member” is defined in paragraph 154 of Schedule 11 to the Financial Services and Markets Act 2023.

- (a) transfer the property or rights against which the liability is secured unless that liability and the benefit of the security are also transferred;
- (b) transfer the benefit of the security unless the liability which is secured is also transferred;
- (c) transfer the liability unless the benefit of the security is also transferred;
- (d) include provision under the continuity powers which terminates or modifies the arrangement if the effect of that provision is to provide that the liability is no longer secured against the property or rights.

(3) For the purposes of paragraph (2), a property transfer instrument which purports to transfer any property, rights or liabilities must be treated as having done so effectively (and so not give rise to a contravention of paragraph (2)), despite the possibility that any of the property, rights or liabilities are foreign property and may not have been effectively transferred by the property transfer instrument or by virtue of steps taken under paragraph 62 of the Schedule.

(4) Paragraph (2) does not apply if the arrangement has been entered into by the CCP in contravention of any requirement set out in regulations made pursuant to section 286(1) of the Financial Services and Markets Act 2000(7) or any rules made pursuant to sections 286(4F)(8) or 300F(9) of that Act.

Financial markets

5.—(1) Subject to paragraph (2), a partial property transfer to which this Part applies may not transfer property, rights or liabilities or include provision under the continuity powers to the extent that to do so would have the effect of modifying, modifying the operation of or rendering unenforceable—

- (a) a market contract;
- (b) the default rules of a recognised investment exchange, recognised clearing house or recognised CSD; or
- (c) the rules of a recognised investment exchange, recognised clearing house or recognised CSD as to the settlement of market contracts not dealt with under its default rules.

(2) The restriction in paragraph (1) does not apply to the extent that it would contradict any provision in a relevant property transfer instrument which applies paragraph 84(10) or (11) of the Schedule (termination rights etc).

(3) In this regulation—

- “default rules” has the meaning given by section 188(10) of the Companies Act 1989;
- “recognised clearing house”, “recognised CSD” and “recognised investment exchange” have the meanings given by section 285 of the Financial Services and Markets Act 2000(11);
- “relevant property transfer instrument” means any instrument made for the purposes of effecting a partial property transfer to which these Regulations apply.

Trusts

6. A partial property transfer to which this Part applies which makes provision under paragraph 55(7)(a) of the Schedule (effect of property transfer instrument) may remove or alter the terms of the

(7) 2000 c. 8. Section 286(1) was amended by paragraph 2(2) of Schedule 8 to the Financial Services Act 2012 (c. 21) and by S.I. 2017/1064.

(8) Section 286(4F) was inserted by section 30 of the Financial Services Act 2012.

(9) Section 300F was inserted by section 9 of the Financial Services and Markets Act 2023.

(10) Section 188 was amended by S.I. 2009/853, 2013/504, 2013/1908, 2017/1064 and 2017/1247.

(11) Section 285 was amended by section 28 of the Financial Services Act 2012, and by S.I. 2013/504, 2017/1064, 2018/135, 2018/1184 and 2019/662.

trust (howsoever arising) only to the extent necessary or expedient for the purpose of transferring from the CCP to the transferee—

- (a) the legal or beneficial interest of the CCP in the property held on trust;
- (b) any powers, rights or obligations of the CCP in respect of the property held on trust.

Additional restrictions on reverse transfers

7.—(1) This regulation applies to a partial property transfer to which this Part applies which is made by the Bank under paragraph 70 or 72 of the Schedule.

(2) Subject to paragraph (3), a partial property transfer to which this regulation applies may not provide for the transfer of—

- (a) any property, rights or liabilities which were not transferred under the original instrument; or
- (b) any liability which was not, at the time immediately before the original instrument was made, a liability owed by the CCP.

(3) Paragraph (2) does not apply to—

- (a) a transfer of property, rights or liabilities which have accrued, become or ceased to become payable, changed or lapsed as a result of the application of a default event provision⁽¹²⁾ which applies by virtue of the original instrument;
- (b) a transfer of property, rights or liabilities to which consent has been given by the transferee, the transferor and any other person whose consent for the transfer would be required were the transfer not being effected by a property transfer instrument;
- (c) a transfer of a claim for damages or an award of damages against the CCP which was in existence immediately before the original instrument was made;
- (d) a transfer to an undertaking which has not entered into insolvency; or
- (e) a transfer under regulation 11(7).

(4) In this regulation—

- (a) “original instrument” has the meaning given by paragraph 70 or 72 of the Schedule; and
- (b) the reference to insolvency includes a reference to—
 - (i) liquidation;
 - (ii) bank insolvency;
 - (iii) administration;
 - (iv) bank administration;
 - (v) receivership;
 - (vi) a composition with creditors; and
 - (vii) a scheme of arrangement.

CCP group companies

8.—(1) A partial property transfer—

- (a) to which this Part applies; and
- (b) under which the transferor is a relevant company,

⁽¹²⁾ “Default event provision” is defined in paragraph 84 of Schedule 11 to the Financial Services and Markets Act 2023 (termination rights etc).

may not transfer property, rights or liabilities of the company unless the property, rights or liabilities are necessary for the carrying on of relevant business.

(2) For these purposes it does not matter whether relevant business has been transferred by a property transfer instrument.

(3) In this regulation—

“financial institution” has the meaning given by point (26) of Article 4(1) of [Regulation \(EU\) No 575/2013](#) of the European Parliament and the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms and amending [Regulation \(EU\) No 648/2012](#)(13);

“relevant business” means the business, or any part of the business, of a CCP which is (or, but for the exercise of a stabilisation power, would be) in the same group as the relevant company; and

“relevant company” means a company, other than a financial institution, which—

- (a) is a CCP group company(14) in relation to which this Part has effect by virtue of paragraph 118 of the Schedule (paragraph 117: supplemental); and
- (b) is not a parent undertaking of the CCP in the same group in respect of which the Bank is satisfied for the purposes of paragraph 117(2) of the Schedule (sale to commercial purchaser, transfer to bridge central counterparty and transfer of ownership: conditions for group companies) that the general conditions for the exercise of a stabilisation power(15) are met.

(4) For the purpose of the definition of “relevant business”, undertakings are in the same group if they are group undertakings in respect of each other.

(5) Expressions defined in the Companies Act 2006(16) have the same meaning in this regulation as in that Act.

(13) EUR 2013/575, as amended by section 1(7)(a) of, and paragraphs 2(1) and (4) of Part 1 of Schedule 1 to, the Financial Services Act 2012 and by [S.I. 2019/1232](#).

(14) “CCP group company” is defined in paragraph 156 of Schedule 11 to the Financial Services and Markets Act 2023 (interpretation: “CCP group company”, etc).

(15) The general conditions for the exercise of a stabilisation power are set out in paragraph 17 of Schedule 11 to the Financial Services and Markets Act 2023 (general conditions).

(16) [2000 c. 46](#).