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STATUTORY INSTRUMENTS

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**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**

**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 (1) 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).

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

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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(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.