
STATUTORY INSTRUMENTS

1999 No. 2979

The Financial Markets and Insolvency (Settlement Finality) Regulations 1999

PART II

DESIGNATED SYSTEMS

Application for designation

3.—(1) Any body corporate or unincorporated association may apply to the designating authority for an order declaring it, or any system of which it is the operator, to be a designated system for the purposes of these Regulations.

(2) Any such application—

- (a) shall be made in such manner as the designating authority may direct; and
- (b) shall be accompanied by such information as the designating authority may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it, the designating authority may require the applicant to furnish additional information.

(4) The directions and requirements given or imposed under paragraphs (2) and (3) may differ as between different applications.

(5) Any information to be furnished to the designating authority under this regulation shall be in such form or verified in such manner as it may specify.

(6) Every application shall be accompanied by copies of the rules of the system to which the application relates and any guidance relating to that system.

Grant and refusal of designation

4.—(1) Where—

- (a) an application has been duly made under regulation 3;
- (b) the applicant has paid any fee charged by virtue of regulation 5(1); and
- (c) the designating authority is satisfied that the requirements of the Schedule are satisfied with respect to the system to which the application relates;

the designating authority may make an order (a “designation order”) declaring the system to be a designated system for the purposes of these Regulations.

(2) In determining whether to make a designation order, the designating authority shall have regard to systemic risks.

(3) Where an application has been made to the Financial Services Authority under regulation 3 in relation to a system through which both securities transfer orders and payment transfer orders are effected, the Authority shall consult the Bank of England before deciding whether to make a designation order.

(4) A designation order shall state the date on which it takes effect.

(5) Where the designating authority refuses an application for a designation order it shall give the applicant a written notice to that effect stating the reasons for the refusal.

Fees

5.—(1) The designating authority may charge a fee to an applicant for a designation order.

(2) The designating authority may charge a designated system a periodical fee.

(3) Fees chargeable by the designating authority under this regulation shall not exceed an amount which reasonably represents the amount of costs incurred or likely to be incurred—

- (a) in the case of a fee charged to an applicant for a designation order, in determining whether the designation order should be made; and
- (b) in the case of a periodical fee, in satisfying itself that the designated system continues to meet the requirements of the Schedule and is complying with any obligations to which it is subject by virtue of these Regulations.

Certain bodies deemed to satisfy requirements for designation

6.—(1) Subject to paragraph (2), an investment exchange or clearing house declared by an order for the time being in force to be a recognised investment exchange or recognised clearing house for the purposes of the 1986 Act, whether that order was made before or is made after the coming into force of these Regulations, shall be deemed to satisfy the requirements in paragraphs 2 and 3 of the Schedule.

(2) Paragraph (1) does not apply to overseas investment exchanges or overseas clearing houses within the meaning of the 1986 Act.

Revocation of designation

7.—(1) A designation order may be revoked by a further order made by the designating authority if at any time it appears to the designating authority—

- (a) that any requirement of the Schedule is not satisfied in the case of the system to which the designation order relates; or
- (b) that the system has failed to comply with any obligation to which it is subject by virtue of these Regulations.

(2) Subsections (2) to (9) of section 11 of the 1986 Act shall apply in relation to the revocation of a designation order under paragraph (1) as they apply in relation to the revocation of a recognition order under subsection (1) of that section; and in those subsections as they so apply—

- (a) any reference to a recognised organisation shall be taken to be a reference to a designated system; and
- (b) any reference to members of a recognised organisation shall be taken to be a reference to participants in a designated system.

Undertakings treated as institutions

8.—(1) A designating authority may treat as an institution any undertaking which participates in a designated system and which is responsible for discharging financial obligations arising from transfer orders effected through that system, provided that—

- (a) the designating authority considers such treatment to be required on grounds of systemic risk, and

- (b) the designated system is one in which at least three institutions (other than any undertaking treated as an institution by virtue of this paragraph) participate and through which securities transfer orders are effected.

(2) Where a designating authority decides to treat an undertaking as an institution in accordance with paragraph (1), it shall give written notice of that decision to the designated system in which the undertaking is to be treated as a participant.

Indirect participants treated as participants

9.—(1) A designating authority may treat—

- (a) an indirect participant as a participant in a designated system, or
- (b) a class of indirect participants as participants in a designated system,

where it considers this to be required on grounds of systemic risk, and shall give written notice of any decision to that effect to the designated system.

Provision of information by designated systems

10.—(1) A designated system shall, on being declared to be a designated system, provide to the designating authority in writing a list of its participants and shall give written notice to the designating authority of any amendment to the list within seven days of such amendment.

(2) The designating authority may, in writing, require a designated system to furnish to it such other information relating to that designated system as it reasonably requires for the exercise of its functions under these Regulations, within such time, in such form, at such intervals and verified in such manner as the designating authority may specify.

(3) When a designated system amends, revokes or adds to its rules or its guidance, it shall within fourteen days give written notice to the designating authority of the amendment, revocation or addition.

(4) A designated system shall give the designating authority at least fourteen days' written notice of any proposal to amend, revoke or add to its default arrangements.

(5) Nothing in this regulation shall require a designated system to give any notice or furnish any information to the Financial Services Authority which it has given or furnished to the Authority pursuant to any requirement imposed by or under section 41 of the 1986 Act (notification requirements) or any other enactment.

Exemption from liability in damages

11.—(1) Neither the designating authority nor any person who is, or is acting as, a member, officer or member of staff of the designating authority shall be liable in damages for anything done or omitted in the discharge, or purported discharge, of the designating authority's functions under these Regulations.

(2) Paragraph (1) does not apply—

- (a) if the act or omission is shown to have been in bad faith; or
- (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998(1) (acts of public authorities).

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

Publication of information and advice

12. A designating authority may publish information or give advice, or arrange for the publication of information or the giving of advice, in such form and manner as it considers appropriate with respect to any matter dealt with in these Regulations.