
STATUTORY INSTRUMENTS

2009 No. 853

The Financial Markets and Insolvency Regulations 2009

Amendment of the Companies Act 1989

2.—(1) The Companies Act 1989 is amended as follows.

(2) In paragraph (c) of section 154 (introduction), after “such transactions” insert “or as default fund contribution,”.

(3) In section 155 (market contracts)—

(a) in subsection (2)(1), at the end of paragraph (a) omit “and” and for paragraph (b) substitute—

“(b) contracts entered into by the exchange, in its capacity as such, with a member of the exchange or with a recognised clearing house or with another recognised investment exchange for the purpose of enabling the rights and liabilities of that member or clearing house or other investment exchange under a transaction to be settled; and

(c) contracts entered into by the exchange with a member of the exchange or with a recognised clearing house or with another recognised investment exchange for the purpose of providing central counterparty clearing services to that member or clearing house or other investment exchange.”;

(b) for subsection (2A), substitute—

“(2A) Where the exchange in question is a recognised overseas investment exchange, this Part does not apply to a contract that falls within paragraph (a) of subsection (2) (unless it also falls within subsection (3)).”;

(c) for subsection (3)(2), substitute—

“(3) In relation to a recognised clearing house this Part applies to—

(a) contracts entered into by the clearing house, in its capacity as such, with a member of the clearing house or with a recognised investment exchange or with another recognised clearing house for the purpose of enabling the rights and liabilities of that member or investment exchange or other clearing house under a transaction to be settled; and

(b) contracts entered into by the clearing house with a member of the clearing house or with a recognised investment exchange or with another recognised clearing house for the purpose of providing central counterparty clearing services to that member or investment exchange or other clearing house.”; and

(d) after subsection (3) insert—

“(3A) In this section “central counterparty clearing services” means—

(a) the services provided by a recognised investment exchange or a recognised clearing house to the parties to a transaction in connection with contracts

(1) Section 155(2) and (2A) were substituted for subsection (2) by [S.I. 1991/880](#). Subsection (2)(b) was amended by [S.I. 1998/1748](#).

(2) Section 155(3) was substituted by [S.I. 1998/1748](#).

- between each of the parties and the investment exchange or clearing house (in place of, or as an alternative to, a contract directly between the parties),
- (b) the services provided by a recognised clearing house to a recognised investment exchange or to another recognised clearing house in connection with contracts between them, or
- (c) the services provided by a recognised investment exchange to a recognised clearing house or to another recognised investment exchange in connection with contracts between them.”.
- (4) In subsection (2) of section 158 (modifications of the law of insolvency)—
- (a) for paragraph (a) substitute—
- “(a) proceedings in respect of a recognised investment exchange or a member or designated non-member of a recognised investment exchange,
- (aa) proceedings in respect of a recognised clearing house or a member of a recognised clearing house, and”.
- (5) In section 159 (proceedings of exchange or clearing house take precedence over insolvency procedures)—
- (a) in subsection (1), after “sequestration, or”, insert “in the administration of a company or other body or”;
- (b) in subsection (4), after “or bankruptcy”, insert “or in the administration of a company or other body” and after “or sequestration”, insert “or in the administration of a company or other body”; and
- (c) in subsection (4A)(b)(3), after “England and Wales,” insert “or in the administration of a company or other body”.
- (6) In section 161 (supplementary provisions as to default proceedings)—
- (a) in subsection (2), after “liquidator”, insert “, administrator”;
- (b) in subsection (4)(4)—
- (i) after “or paragraph”, insert “40, 41,”; and
- (ii) for “including paragraph 43(6) as applied by paragraph 44”, substitute “including those paragraphs as applied by paragraph 44”; and
- (c) in subsection (4) as it has effect, by virtue of section 249(1) of the Enterprise Act 2002, without the amendments made by paragraph 45 of Schedule 17 to that Act, for “10(1)(c), 11(3)” substitute “10, 11”.
- (7) In section 163 (net sum payable on completion of default proceedings)—
- (a) in subsection (2)—
- (i) for “or winding-up order has been made”, substitute “, winding-up or administration order has been made”;
- (ii) in paragraph (a), for “or winding up”, substitute “, winding up or administration”;
- (iii) in paragraph (b), after “winding up”, add “or administration”;
- (iv) after “(within the meaning of section 247 of the Insolvency Act 1986)”, insert “, or enters administration”; and

(3) Subsection (4A) was inserted by [S.I. 1991/880](#).

(4) Subsection (4) was amended by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 43, 45. The amendment made by section 248(3) did not apply to special administration regimes set out in section 249 of that Act nor to specified regimes set out in [S.I. 2003/2093](#), regulation 3.

- (v) after “the date of the winding-up order” insert “or the date on which the partnership enters administration”.
- (b) in subsection (3)—
 - (i) after “sequestration or a winding-up”, insert “or administration”;
 - (ii) in each of paragraphs (a) and (b), for “or winding up”, substitute “, winding up or administration”; and
 - (iii) after “(within the meaning of section 129 of the Insolvency Act 1986)”, insert “or the date on which the body corporate enters administration”;
- (c) after subsection (3), insert—
 - “(3A) In subsections (2) and (3), a reference to the making of an administration order shall be taken to include a reference to the appointment of an administrator under—
 - (a) paragraph 14 of Schedule B1 to the Insolvency Act 1986 (appointment by holder of qualifying floating charge); or
 - (b) paragraph 22 of that Schedule (appointment by company or directors).”**(5)**; and
 - (d) in subsection (4), at the end of paragraph (a) omit “or” , at the end of paragraph (b) insert “or”, and, after paragraph (b), insert—
 - “(c) that an application for an administration order was pending or that any person had given notice of intention to appoint an administrator,”.
- (8) In section 164 (disclaimer of property, rescission of contracts, &c)—
 - (a) in subsection (1), at the end of paragraph (b) insert “or as default fund contribution”;
 - (b) in subsection (3)—
 - (i) after paragraph (b) insert—
 - “(ba) the provision of default fund contribution to the exchange or clearing house,”;
 - (ii) in paragraph (c), after “in relation to a market contract” insert “or as default fund contribution”; and
 - (iii) at the end of paragraph (d) insert “or as default fund contribution”;
 - (c) in subsection (4)—
 - (i) after “margin in relation to a market contract” insert “or default fund contribution”; and
 - (ii) after “the margin” in each of the two places where the expression occurs insert “or default fund contribution”; and
 - (d) in subsection (5) at the end insert “or of default fund contribution”.
- (9) In section 165 (adjustment of prior transactions)—
 - (a) in paragraph (c) of subsection (4), after “clearing house”, insert “in question”; and
 - (b) after subsection (4) insert—
 - “(5) This section also applies to—
 - (a) the provision of default fund contribution to a recognised investment exchange or recognised clearing house,
 - (b) any contract effected by a recognised investment exchange or recognised clearing house for the purpose of realising the property provided as default fund contribution, and

(5) Schedule B1 to the Insolvency Act 1986 was inserted by the Enterprise Act 2002, section 248(2) and Schedule 16.

- (c) any disposition of property in accordance with the rules of the recognised investment exchange or recognised clearing house as to the application of property provided as default fund contribution.”.

(10) In section 167 (application to determine whether default proceedings to be taken)—

(a) for subsections (1) and (1A)(6) substitute—

“(1) This section applies where a relevant insolvency event has occurred in the case of—

- (a) a recognised investment exchange or a member or designated non-member of a recognised investment exchange, or
- (b) a recognised clearing house or a member of a recognised clearing house.

The investment exchange, member, designated non-member or clearing house in whose case a relevant insolvency event has occurred is referred to below as “the person in default”.

(1A) For the purposes of this section a “relevant insolvency event” occurs where—

- (a) a bankruptcy order is made,
- (b) an award of sequestration is made,
- (c) an order appointing an interim receiver is made,
- (d) an administration or winding up order is made,
- (e) an administrator is appointed under paragraph 14 of Schedule B1 to the Insolvency Act 1986 (appointment by holder of qualifying floating charge) or under paragraph 22 of that Schedule (appointment by company or directors),
- (f) a resolution for voluntary winding up is passed, or
- (g) an order appointing a provisional liquidator is made.

(1B) Where in relation to a person in default a recognised investment exchange or a recognised clearing house (“the responsible exchange or clearing house”)—

- (a) has power under its default rules to take action in consequence of the relevant insolvency event or the matters giving rise to it, but
- (b) has not done so,

a relevant office-holder appointed in connection with or in consequence of the relevant insolvency event may apply to the Authority.”;

(b) in subsection (2), for “the exchange or clearing house concerned” substitute “the responsible exchange or clearing house”;

(c) in subsection (3)—

- (i) for “the exchange or clearing house”, in each of the three places where the expression occurs, substitute “the responsible exchange or clearing house”;
- (ii) for “the member or designated non-member in question” substitute “the person in default”; and

(d) in each of subsections (4) and (5), for “the exchange or clearing house” substitute “the responsible exchange or clearing house”.

(11) In section 170 (certain overseas exchanges and clearing houses) for subsection (1)(7) substitute—

(6) Subsection (1) was amended by [S.I. 2001/3649](#). Subsection (1A) was inserted by the Enterprise Act 2002, section 248(3) and Schedule 16.

(7) Subsection (1) was amended by [S.I. 2001/3649](#).

“(1) The Secretary of State and the Treasury may by regulations provide that this Part applies in relation to contracts connected with an overseas investment exchange or overseas clearing house which—

- (a) is not a recognised investment exchange or recognised clearing house, but
- (b) is approved by the Treasury in accordance with such requirements as may be so specified,

as it applies in relation to contracts connected with a recognised investment exchange or recognised clearing house.”.

(12) In section 175(8) (administration orders, &c) as it has effect, by virtue of section 249(1) of the Enterprise Act 2002, without the amendments made by paragraph 47 of Schedule 17 to that Act, for subsection (1) substitute—

“(1) The following provisions of the Insolvency Act 1986 (which relate to administration orders and administrators) do not apply in relation to a market charge—

- (a) sections 10 and 11 (effect of application for administration order and of an administration order), and
- (b) section 15(1), (2) and (3) (power of administrator to deal with charged property).”.

(13) In section 177 (application of margin not affected by certain other interests)—

- (a) in the heading, after “margin” insert “or default fund contribution”;
- (b) in each of subsection (1) and (2), at the end insert “or as default fund contribution”; and
- (c) in subsection (3), after “as margin” insert “or as default fund contribution”.

(14) In subsection (1) of section 180(9) (proceedings against market property by unsecured creditors)—

- (a) after “as margin in relation to market contracts”, insert “or as default fund contribution,”; and
- (b) in paragraph (a), after “for margin”, insert “or as default fund contribution”.

(15) In section 188 (meaning of “default rules” and related expressions)—

- (a) in subsection (1) after “person” insert “(including another recognised investment exchange or recognised clearing house)”; and
- (b) after subsection (3), insert—

“(3A) In this Part “default fund contribution” means—

- (a) contribution by a member or designated non-member of a recognised investment exchange to a fund which—
 - (i) is maintained by that exchange for the purpose of covering losses arising in connection with defaults by any of the members of the exchange, or defaults by any of the members or designated non-members of the exchange, and
 - (ii) may be applied for that purpose under the default rules of the exchange;
- (b) contribution by a member of a recognised clearing house to a fund which—
 - (i) is maintained by that clearing house for the purpose of covering losses arising in connection with defaults by any of the members of the clearing house, and

(8) Subsections (1), (1A) and (2A) were inserted, and section (2) amended, by section 248(3) of the Enterprise Act 2002 (c.40), Schedule 17, paragraph 47. The amendment made by section 248(2) did not apply to special administration regimes set out in section 249 of that Act nor to specified regimes set out in S.I. 2003/2093, regulation 3.

(9) Subsection (1) is amended by the Tribunals, Courts and Enforcement Act 2007, section 62(3), Schedule 13, paragraph 91.

- (ii) may be applied for that purpose under the default rules of the clearing house;
 - (c) contribution by a recognised clearing house to a fund which—
 - (i) is maintained by a recognised investment exchange or another recognised clearing house (A) for the purpose of covering losses arising in connection with defaults by recognised clearing houses or recognised investment exchanges other than A or by any of their members, and
 - (ii) may be applied for that purpose under A’s default rules; or
 - (d) contribution by a recognised investment exchange to a fund which—
 - (i) is maintained by a recognised clearing house or another recognised investment exchange (A) for the purpose of covering losses arising in connection with defaults by recognised investment exchanges or recognised clearing houses other than A or by any of their members, and
 - (ii) may be applied for that purpose under A’s default rules.”.
- (16) In section 191(10) (index of defined expressions), after the expression “cover for margin”, insert—
“default fund contribution section 188(3A)”.