
STATUTORY INSTRUMENTS

2011 No. 245

The Investment Bank Special Administration Regulations 2011

Objective 1 - shortfall in client assets held in omnibus account

12.—(1) This regulation applies if—

- (a) the administrator becomes aware that there is a shortfall in the amount available for distribution of securities of a particular description held by the investment bank as client assets in a client omnibus account;
- (b) the shortfall cannot be remedied following the resolution of on-going disputes; and
- (c) the assets in question are not ones which are received or held, or should have been held, by the investment bank in accordance with rules made by virtue of section 139 of FSMA (clients' money).

(2) The administrator, in making the distribution, shall ensure (subject to the treatment of late claims as described in regulation 11(5)) that the shortfall referred to in paragraph (1) be borne pro rata by all clients for whom the investment bank holds securities of that particular description in that same account in proportion to their beneficial interest in those securities.

(3) A person (including the investment bank) ("a security holder") with a security interest over securities held in the client omnibus account on behalf of a particular client shall be entitled to participate in distributions and shortfall claims in respect of those securities in accordance with their entitlement as against that client (subject to the treatment of late claims as described in regulation 11(5)).

(4) Security holders shall not, at any time, be entitled to claim in aggregate in excess of the distribution which the client would have been entitled to if there had been no claim by that client.

(5) Any reduction of the client's beneficial interest as a result of the application of paragraph (2) shall limit correspondingly the rights of the security holder in respect of the distribution, (but this shall not affect the right of the security holder in respect of the client's shortfall claim as described in paragraph (7)).

(6) Where there is a dispute between persons as to their respective share of a distribution, the administrator may—

- (a) make the distribution in accordance with an agreement drawn up between the parties in dispute; or
- (b) lodge the securities that are the subject of the dispute with the court,

and if the administrator pursues either course of action, the administrator's obligations in respect of Objective 1 with regard to these securities shall be deemed to be discharged.

(7) The shortfall borne by a client under paragraph (2) is that client's shortfall claim against the investment bank ("shortfall claim") and shall rank as an unsecured claim.

(8) The value of a client's shortfall claim shall be based on the market price for those securities to which the shortfall claim relates on the date the investment bank entered special administration or, if that is not a business day, on the last business day prior to the investment bank entering special administration.

(9) In this regulation—

“client omnibus account” means an account held by the investment bank, or another institution in the name of the investment bank, made up of multiple accounts of clients of the investment bank;

“distribution” means the return of client assets that are securities of a particular description;

“market price” means—

- (a) the value of the securities on the day in question as determined by a reputable source used by the investment bank, immediately prior to the investment bank entering special administration, for valuing or reporting in respect of those securities; or
- (b) if this is not practicable, the value of those securities on the day in question as determined by the administrator which reflects, in the administrator’s opinion, a fair and reasonable price for those securities; and

“securities of a particular description” means securities issued by the same issuer which are of the same class of shares or stock; or in the case of securities other than shares or stock, which are of the same currency and denomination and treated as forming part of the same issue.