
STATUTORY INSTRUMENTS

2013 No. 1908

The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013

Amendments to the Companies Act 1989

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

(2) In section 155 (market contracts)(1)—

(a) in subsection (2B)(c), after “subsection (2C)”, insert “or (2D)”;

(b) after subsection (2C) insert—

“(2D) A client trade is also excluded by this subsection from subsection (2B)(c) if—

(a) the client trade was entered into by a client in the course of providing indirect clearing services to an indirect client;

(b) the client defaults; and

(c) the clearing member client contract corresponding to the client trade is not transferred within—

(i) the period specified for this purpose in the default rules of the recognised central counterparty; or

(ii) if no such period is specified in the default rules of the recognised central counterparty, a period of 14 days beginning with the day on which proceedings in respect of the client’s insolvency are begun.”; and

(c) after subsection (3A) insert—

“(3B) The reference in subsection (2D)(c)(ii) to the beginning of insolvency proceedings is to—

(a) the presentation of a bankruptcy petition or a petition for sequestration of a client’s estate, or

(b) the application for an administration order or the presentation of a winding-up petition or the passing of a resolution for voluntary winding up, or

(c) the appointment of an administrative receiver.

(3C) In subsection (3B)(b) the reference to an application for an administration order is to be taken to include a reference to—

(a) in a case where an administrator is appointed under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (appointment by floating charge holder, company or directors) following filing with the court of a copy of a notice of intention to appoint under that paragraph, the filing of the copy of the notice, and

(1) Section 155 has been amended by [S.I. 1991/880](#), [S.I. 2009/853](#) and [S.I. 2013/504](#).

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- (b) in a case where an administrator is appointed under either of those paragraphs without a copy of a notice of intention to appoint having been filed with the court, the appointment of the administrator.”.
- (3) In section 155A(2) (qualifying collateral arrangements and qualifying property transfers), in subsection (4)—
- (a) after paragraph (a), insert—
- “(aa) payments of money by a clearing member to indirect clients in accordance with Article 4(5) of the EMIR Level 2 Regulation;”;
- (b) after paragraph (b), insert—
- “(c) transfers of property to the extent that they—
- (i) are made by a clearing member to a non-defaulting client or another clearing member instead of, or in place of, a defaulting client;
- (ii) represent the termination or close out value of a client trade which is transferred from a defaulting client to another clearing member or a non-defaulting client; and
- (iii) do not exceed the termination or close out value of the clearing member client contract corresponding to that client trade, as determined in accordance with the default rules of the recognised central counterparty.”.
- (4) In section 158(1)(d) (modifications of the law of insolvency)—
- (a) after “by the clearing member”, insert “or client”; and
- (b) in the phrase “action taken to transfer the client trades”, omit “the”.
- (5) In section 159 (proceedings of exchange or clearing house take precedence over insolvency procedures)—
- (a) in subsection (1), paragraph (f)—
- (i) after “by the clearing member”, insert “or client”;
- (ii) for “the client trade”, substitute “a client trade”;
- (b) in subsection (2), paragraph (d)—
- (i) after “by the clearing member”, insert “or client”; and
- (ii) for “the client trade”, substitute “a client trade”.
- (6) In section 166 (powers to give directions), in subsection (9), paragraph (b), after “recognised clearing house”, insert “or a defaulting clearing member”.
- (7) In section 167 (application to determine whether default proceedings to be taken), in subsection (1)—
- (a) at the end of paragraph (a), omit “or”;
- (b) at the end of paragraph (b), insert—
- “, or
- (c) a client which is providing indirect clearing services to an indirect client.”;
- (c) in the last sentence, for “or clearing house”, substitute “clearing house or client”.
- (8) In section 170A(3) (EEA central counterparties and third country central counterparties)—
- (a) in subsection (1), at the end of paragraph (g), insert—

(2) Section 115A was inserted by [S.I. 2013/504](#).

(3) Section 170A was also inserted by [S.I. 2013/504](#).

“, and

(h) “UK client” means a client—

(i) which offers indirect clearing services, and

(ii) to which the law of a part of the United Kingdom will apply for the purposes of an insolvent re-organisation or winding up.”;

(b) in subsection (2), after “a UK clearing member”, insert “or a UK client”.

(9) In section 182A(4) (recognised central counterparties: disapplication of provisions on mutual credit and set-off), after subsection (1), insert—

“(2) Nothing in the law of insolvency shall enable the setting off against each other of—

(a) positions and assets recorded in an account at a clearing member and held for the account of an indirect client or a group of indirect clients in accordance with Articles 4(2) and (3) of the EMIR Level 2 Regulation; and

(b) positions and assets recorded in any other account at the clearing member.”.

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

(a) in subsection (1), omit from “and in the case of a recognised central counterparty” to the end of the subsection;

(b) after subsection (1), insert—

“(1A) In the case of a recognised central counterparty, “default rules” includes—

(a) the default procedures referred to in Article 48 of the EMIR Level 1 Regulation; and

(b) any rules of the recognised central counterparty which provide for the taking of action in accordance with a request or instruction from a clearing member under the default procedures referred to in Article 4(4) of the EMIR Level 2 Regulation in respect of assets or positions held by the recognised central counterparty for the account of an indirect client or group of indirect clients.”;

(c) after subsection (2), insert—

“(2A) For the purposes of subsection (2), where a recognised central counterparty takes action under the rules referred to in subsection (1A)(b), the action is to be treated as taken in respect of the client providing the indirect clearing services.”.

(11) After section 189, insert—

“Meaning of “transfer”

189A.—(1) In this Part, a reference to a transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement shall be interpreted in accordance with this section.

(2) A transfer of a clearing member client contract or client trade includes—

(a) an assignment;

(b) a novation; and

(c) terminating or closing out the clearing member client contract or client trade and establishing an equivalent position between different parties.

(3) Where a clearing member client contract is recorded in the accounts of a recognised central counterparty as a position held for the account of an indirect client or group of indirect

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clients, the clearing member client contract is to be treated as having been transferred if the position is transferred to a different account at the recognised central counterparty.

(4) A reference to a transfer of a qualifying collateral arrangement includes an assignment or a novation.”.

(12) In section 190 (minor definitions)—

(a) at the appropriate place, insert—

““indirect clearing services” has the same meaning as in the EMIR Level 2 Regulation;”; and

(b) omit subsection (3A).

(13) In the table in section 191 (index of defined expressions), at the appropriate places, insert the following rows—

“indirect clearing services	Section 190(1)
transfer	Section 189A”

Commencement Information

II Reg. 2 in force at 26.8.2013, see [reg. 1\(3\)\(c\)](#)

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Changes and effects yet to be applied to :

- Regulations power to modify conferred by [2023 c. 29 s. 3 Sch. 1 Pt. 2](#)
- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)