STATUTORY INSTRUMENTS

2013 No. 504

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories Regulations 2013

Made - - - - *6th March 2013*

Laid before Parliament - *7th March 2013*

Coming into force in accordance with regulation 1(2)

£9.75

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The Treasury are designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to financial services.

The Treasury make the following Regulations in exercise of—

(a) the powers conferred by section 2(2) of the European Communities Act 1972;

(b) the powers conferred by sections 155(4) and (5), 186(1) and 187(3) of the Companies Act 1989(**c**) and now vested in them(**d**);

(c) the powers conferred by sections 286 and 428(3) of the Financial Services and Markets Act 2000(**e**), with the approval of the Secretary of State required by section 286(2) of that Act.

The Treasury and the Secretary of State make the following Regulations in exercise of the powers conferred by sections 158(4) and (5), 174(2) to (4), 185 and 186(1) of the Companies Act 1989(**f**) and now vested in them jointly(**g**).

(**a**) S.I. 2012/1759.
(**b**) 1972 c.68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
(**c**) 1989 c.40.
(**d**) The powers originally vested in the Secretary of State under sections 155(4) and (5), and 187(3) were transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315). Powers originally vested in the Secretary of State under section 186(1) were transferred to the Treasury insofar as they relate to functions under those sections.
(**e**) 2000 c.8; section 286 was amended by S.I. 2006/2975 and 2007/126 and section 30 of, and paragraph 2 of Schedule 8 to, the Financial Services Act 2012 (c.21).
(**f**) Section 185 was amended by S.I. 2001/3649.
(**g**) The powers originally vested in the Secretary of State under sections 158(4) and (5), 174(2) to (4), and 185 of the Companies Act 1989 are now exercisable by the Secretary of State jointly with the Treasury: see the Transfer of Functions (Financial Services) Order 1992. Powers originally vested in the Secretary of State under section 186(1) are now exercisable by the Secretary of State jointly with the Treasury insofar as they relate to functions under those sections.

PART 1

Citation, commencement and interpretation

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013.

(2) These Regulations come into force on 1st April 2013, immediately after section 6 of the Financial Services Act 2012 comes fully into force.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Financial Services and Markets Act 2000;

"the 1989 Act" means the Companies Act 1989;

"the Bank" means the Bank of England;

"central counterparty" means a body corporate or unincorporated association which interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

"clearing", in relation to a central counterparty, means the process of establishing positions, including the calculation of net obligations and ensuring that financial instruments, cash, or both, are available to secure the exposures arising from those positions; and "clearing services", in relation to a central counterparty, is to be read accordingly;

"the EMIR regulation" means Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories(**a**), and any reference to the requirements contained in that Regulation includes a reference to requirements contained in any directly applicable EU regulation made under its provisions;

"recognised central counterparty" means a central counterparty in relation to which a recognition order under Part 18 of the Act is in force.

(2) Except as provided by paragraph (1)—

(a) any expression used in these Regulations which is defined for the purposes of the EMIR regulation has the meaning which it has in that Regulation; and

(b) any other expression used in these Regulations which is defined for the purposes of the Act has the meaning given by the Act.

PART 2

Amendments to the Financial Services and Markets Act 2000

Amendments to the Financial Services and Markets Act 2000

3.—(1) The Act is amended as follows.

(2) In section 55G(3)(a)(**b**) (giving permission: special cases), for "section 285(2) or (3)" substitute "any of subsections (2) to (3C) of section 285".

(3) In section 285(**c**) (exemption for recognised investment exchanges and clearing houses)—

(**a**) OJ No L 201, 27.7.2012, p1.
(**b**) Section 55G was inserted by section 11 of the Financial Services Act 2012.
(**c**) Section 285 was amended by section 28 of the Financial Services Act 2012.

(a) in subsection (1), for paragraph (b) and the "and" immediately before it substitute—

"(b) "recognised clearing house" means—

(i) a central counterparty in relation to which a recognition order is in force (in this Part referred to as a "recognised central counterparty"), or

(ii) a clearing house which provides clearing services in the United Kingdom without doing so as a central counterparty, and in relation to which a recognition order is in force;

(c) "EEA central counterparty" means a person established in an EEA State other than the United Kingdom who has been authorised by the competent authority of that State as a central counterparty pursuant to Article 17 of the EMIR regulation; and

(d) "third country central counterparty" means a person established in a State which is not an EEA State who has been recognised by ESMA as a central counterparty pursuant to Article 25 of the EMIR regulation.";

(b) in subsection (3) for "A recognised clearing house" substitute "A recognised clearing house which is not a recognised central counterparty";

(c) after subsection (3) insert—

"(3A) A recognised central counterparty is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services or activities specified in its recognition order.

(3B) An EEA central counterparty is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services or activities specified in its authorisation granted pursuant to Article 17 of the EMIR regulation.

(3C) A third country central counterparty is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services or activities specified in its recognition by ESMA pursuant to Article 25 of the EMIR regulation.".

(4) In section 285A(**a**) (powers exercisable in relation to recognised investment exchanges and clearing houses), in subsection (3)(c), for "UK clearing houses" substitute "recognised clearing houses".

(5) In section 288(**b**) (application by a clearing house)—

(a) for subsection (1) substitute—

"(1) A body corporate or unincorporated association which is established in the United Kingdom may, where it intends to provide clearing services as a central counterparty, apply to the Bank of England in accordance with Article 17 of the EMIR regulation for an order granting authorisation for the purposes of that Article and declaring it to be a recognised central counterparty for the purposes of this Act.

(1A) A body corporate or unincorporated association may, where it intends to provide clearing services in the United Kingdom without doing so as a central counterparty, apply to the Bank of England for an order declaring it to be for the purposes of this Act a recognised clearing house which is not a recognised central counterparty.";

(b) in subsection (2), for "The application" substitute "An application under subsection (1A)".

(6) In section 289(**c**) (applications: supplementary), after subsection (3) insert—

"(4) In relation to an application under section 288(1), this section does not apply to information which can be required under Article 17 of the EMIR regulation.".

(**a**) Section 285A was inserted by section 29 of the Financial Services Act 2012.
(**b**) Section 288 was amended by Schedule 8 to the Financial Services Act 2012.
(**c**) Section 289 was amended by Schedule 8 to the Financial Services Act 2012.

(7) In section 290(**a**) (recognition orders)—

(a) for subsection (1) substitute—

"(1) If it appears to the appropriate regulator that the applicant satisfies the recognition requirements applicable in its case, the regulator may—

(a) where the application is made under section 287, make a recognition order declaring the applicant to be a recognised investment exchange;

(b) where the application is made under section 288(1) and Article 17 of the EMIR regulation allows authorisation to be granted, make a recognition order ("a central counterparty recognition order") granting authorisation for the purposes of that Article and declaring the applicant to be a recognised central counterparty; or

(c) where the application is made under section 288(1A), make a recognition order declaring the applicant to be a recognised clearing house which is not a recognised central counterparty.";

(b) after subsection (1C) insert—

"(1D) A central counterparty recognition order must specify the services or activities linked to clearing which the applicant may provide or perform and the classes of financial instruments covered by the order.";

(c) in subsection (3) after "an application", insert "made under section 287 or 288(1A)";

(d) in subsection (5), after "recognition order", insert "in respect of an investment exchange or a clearing house which is not a central counterparty";

(e) after subsection (5) insert—

"(7) Where—

(a) a body corporate or unincorporated association has made an application under section 288(1), and

(b) the Bank of England has determined that application in accordance with Article 17 of the EMIR regulation,

any previous recognition order under section 290(1)(c) or 292(2)(b) shall cease to be valid."

.

(8) After section 290 insert—

"Variation of central counterparty recognition order

290ZA.—(1) On an application made to it in accordance with Article 15 of the EMIR regulation, the Bank of England may in accordance with Article 17 of that regulation vary a central counterparty recognition order by specifying an additional service or activity or class of financial instruments.

(2) Where Article 20(5) of the EMIR regulation applies, the Bank of England may vary a central counterparty recognition order by removing a service or activity or class of financial instruments from those specified in the order.

(3) The Bank of England may at any time vary a central counterparty recognition order for the purpose of correcting an error in, or omission from, the order.".

(9) In section 290A(**b**) (refusal of recognition on ground of excessive regulatory provision), for subsection (6) substitute—

"(6) This section does not apply to an application for recognition as an overseas investment exchange, an overseas clearing house or a recognised central counterparty.".

(**a**) Section 290 was amended by S.I. 2007/126 and Schedule 8 to the Financial Services Act 2012.

(**b**) Section 290A was inserted by section 4 of the Investment Exchanges and Clearing Houses Act 2006 (c.55) and amended by Schedule 8 to the Financial Services Act 2012.

(10) In section 292(**a**) (overseas investment exchanges and overseas clearing houses)—

(a) in subsection (1), for "288" substitute "288(1A)";

(b) in subsection (2)(b) after "recognised clearing house" insert "which is not a central counterparty";

(c) after subsection (5) insert—

"(6) Where a recognised clearing house is authorised as an EEA central counterparty or recognised as a third country central counterparty, any previous recognition order under section 290(1)(c) or 292(2)(b) shall cease to be valid.".

(11) In section 296A(**b**) (additional power to direct UK clearing houses)—

(a) in the heading, for "UK clearing houses" substitute "recognised central counterparties";

(b) in subsection (1)—

(i) for "UK clearing house" substitute "recognised central counterparty";

(ii) in paragraph (c) omit "central counterparty";

(c) in subsections (1) to (4), in each place, for "clearing house" substitute "recognised central counterparty".

(12) In section 297(**c**) (revoking recognition)—

(a) in subsection (1), after "recognition order" insert "in respect of a recognised investment exchange or in respect of a recognised clearing house which is not a recognised central counterparty";

(b) after subsection (1) insert—

"(1A) A central counterparty recognition order may be revoked by an order made by the Bank of England in accordance with Article 20 of the EMIR regulation.";

(c) in subsection (2), after "recognised body" insert "which is not a recognised central counterparty";

(d) in subsection (2A), after "recognised body" insert "which is not a recognised central counterparty".

(13) In section 300E(**d**) (power to disallow excessive regulatory provision: supplementary), in subsection (3), for "or overseas clearing house" substitute ", overseas clearing house or recognised central counterparty".

(14) In section 313(**e**) (interpretation of Part 18), in subsection (1)—

(a) insert at the appropriate places—

""central counterparty" means a body corporate or unincorporated association which interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

"central counterparty recognition order" means a recognition order made under section 290(1)(b);

"clearing", in relation to a central counterparty, means the process of establishing positions, including the calculation of net obligations and ensuring that financial instruments, cash, or both, are available to secure the exposures arising from those positions; and "clearing services", in relation to a central counterparty, is to be read accordingly;

"the EMIR regulation" means Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade

(**a**) Section 292 was amended by S.I. 2006/2975 and Schedule 8 to the Financial Services Act 2012.
(**b**) Section 296A was inserted by section 31 of the Financial Services Act 2012.
(**c**) Section 297 was amended by S.I. 2007/126 and 2012/916 and Schedule 8 to the Financial Services Act 2012.
(**d**) Section 300E inserted by section 2 of the Investment Exchanges and Clearing Houses Act 2006.
(**e**) The definitions in section 313(1) of "central counterparty clearing services" and "UK clearing house" were inserted by Schedule 8 to the Financial Services Act 2012.

repositories(**a**), and any reference to the requirements contained in that Regulation includes a reference to requirements contained in any directly applicable EU regulation made under its provisions;

"recognised central counterparty" has the meaning given in section 285;";

(b) for the definition of "overseas clearing house" substitute—

""overseas clearing house" means a body corporate or association which is not a central counterparty and has neither its head office nor its registered office in the United Kingdom and in relation to which a recognition order is in force;";

(c) omit the definitions of "central counterparty clearing services" and "UK clearing house".

(15) In section 417 (definitions), in subsection (1), in the definition of "exempt person", for "section 285(2) or (3)" substitute "any of subsections (2) to (3C) of section 285".

(16) In Schedule 17A(**b**) (further provision in relation to the exercise of Part 18 functions by the Bank of England)—

(a) in paragraph 11(2)—

(i) at the end of paragraph (b) omit "and";

(ii) at the end of paragraph (c), insert—

"; and

(d) information or documents reasonably required in connection with the exercise by the Bank of its functions under the EMIR regulation.";

(b) in paragraph 18(2), after "statutory provision" insert "or the EMIR regulation";

(c) in paragraph 19(2)(a), after "statutory provision" insert "or the EMIR regulation";

(d) at the end of paragraph 23 insert "or any of its functions under the EMIR regulation";

(e) in the heading of Part 3, for "UK clearing houses" substitute "recognised clearing houses";

(f) in paragraph 34, in each place, for "UK clearing house" substitute "recognised clearing house";

(g) in paragraph 35—

(i) in sub-paragraph (1) for "UK clearing house" substitute "recognised clearing house";

(ii) in sub-paragraph (2)(c) omit "central counterparty";

(h) in paragraph 36—

(i) in sub-paragraph (1) after "recognised clearing houses" insert ", EEA central counterparties or third country central counterparties";

(ii) at the end of sub-paragraph (2)(a) omit "and";

(iii) at the end of sub-paragraph (2)(b) insert—

", and

(c) its functions under or as a result of Part 7 of the Companies Act 1989.".

PART 3

Amendments to the Companies Act 1989

Amendments to the Companies Act 1989

4.—(1) The 1989(**c**) Act is amended as follows.

(**a**) OJ No L 201, 27.7.2012, p1.
(**b**) Schedule 17A was inserted by Schedule 7 to the Financial Services Act 2012.
(**c**) 1989 c. 40.

(2) In section 155 (market contracts)(**a**)—

(a) for subsection (1) substitute—

"(1) In this Part—

(a) "clearing member client contract" means a contract between a recognised central counterparty and one or more of the parties mentioned in subsection (1A) which is recorded in the accounts of the recognised central counterparty as a position held for the account of a client, an indirect client or a group of clients or indirect clients;

(b) "clearing member house contract" means a contract between a recognised central counterparty and a clearing member recorded in the accounts of the recognised central counterparty as a position held for the account of a clearing member;

(c) "client trade" means a contract between two or more of the parties mentioned in subsection (1A) which corresponds to a clearing member client contract;

(d) "market contracts" means the contracts to which this Part applies by virtue of subsections (2) to (3)."

(b) after subsection (1) insert—

"(1A) The parties referred to in subsections (1)(a) and (c) are—

(a) a clearing member;

(b) a client; and

(c) an indirect client.";

(c) after subsection (2A) insert—

"(2B) In relation to transactions which are cleared through a recognised central counterparty, this Part applies to—

(a) clearing member house contracts;

(b) clearing member client contracts;

(c) client trades, other than client trades excluded by subsection (2C); and

(d) contracts entered into by the recognised central counterparty with a recognised investment exchange or a recognised clearing house for the purpose of providing central counterparty clearing services to that exchange or clearing house.

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

(a) the clearing member which is a party to the clearing member client contract corresponding to the client trade defaults; and

(b) the clearing member client contract is not transferred to another clearing member within the period specified for this purpose in the default rules of the recognised central counterparty."; and

(d) in subsection (3) after "In relation to a recognised clearing house" insert "which is not a recognised central counterparty,".

(3) After section 155 insert—

"**Qualifying collateral arrangements and qualifying property transfers**

155A.—(1) In this Part—

(a) "qualifying collateral arrangements" means the contracts and contractual obligations to which this Part applies by virtue of subsection (2); and

(b) "qualifying property transfers" means the property transfers to which this Part applies by virtue of subsection (4).

(**a**) Sections 155(2) and (2A) were substituted by S.I. 1991/800; section 155(3) was substituted by S.I. 2009/853.

(2) In relation to transactions which are cleared through a recognised central counterparty, this Part applies to any contracts or contractual obligations for, or arising out of, the provision of property as margin where—

(a) the margin is provided to a recognised central counterparty and is recorded in the accounts of the recognised central counterparty as an asset held for the account of a client, an indirect client, or a group of clients or indirect clients; or

(b) the margin is provided to a client or clearing member for the purpose of providing cover for exposures arising out of present or future client trades.

(3) In subsection (2)—

(a) "property" has the meaning given by section 436(1) of the Insolvency Act 1986(**a**) and

(b) the reference to a contract or contractual obligation for, or arising out of, the provision of property as margin in circumstances falling within paragraph (a) or (b) of that subsection includes a reference to a contract or contractual obligation of that kind which has been amended to reflect the transfer of a clearing member client contract or client trade.

(4) In relation to transactions which are cleared through a recognised central counterparty, this Part applies to—

(a) transfers of property made in accordance with Article 48(7) of the EMIR Level 1 Regulation;

(b) transfers of property to the extent that they—

(i) are made by a recognised central counterparty to a non-defaulting clearing member instead of, or in place of, a defaulting clearing member;

(ii) represent the termination or close out value of a clearing member client contract which is transferred from a defaulting clearing member to a non-defaulting clearing member; and

(iii) are determined in accordance with the default rules of the recognised central counterparty.".

(4) In section 157 (change in default rules)(**b**)—

(a) in subsection (1)—

(i) for "recognised UK clearing house" substitute "recognised clearing house";

(ii) for "14 days", in both places it occurs, substitute "three months";

(b) after subsection (1) insert—

"(1A) The appropriate regulator may, if it considers it appropriate to do so, agree a shorter period of notice and, in a case where it does so, any direction under this section must be given by it within that shorter period.";

(c) in subsection (4)(b) for "recognised UK clearing house" substitute "recognised clearing house".

(5) In section 158 (modifications of the law of insolvency)(**c**)—

(a) for subsection (1) substitute—

"(1) The general law of insolvency has effect in relation to—

(a) market contracts,

(**a**) 1986 c. 45.
(**b**) Section 157(1) was amended by S.I. 2001/3649 and by paragraph 65 of Schedule 18 to the Financial Services Act 2012; subsection 157(4) was inserted by paragraph 65 of Schedule 18 to the Financial Services Act 2012.
(**c**) Section 158 was amended by paragraph 44 of Schedule 17 to the Enterprise Act 2002 (c. 40) and S.I. 2009/853.

(b) action taken under the rules of a recognised investment exchange, or a recognised clearing house which is not a recognised central counterparty, with respect to market contracts,

(c) action taken under the rules of a recognised central counterparty to transfer clearing member client contracts, or settle clearing member client contracts or clearing member house contracts, in accordance with the default rules of the recognised central counterparty,

(d) where clearing member client contracts transferred in accordance with the default rules of a recognised central counterparty were entered into by the clearing member as a principal, action taken to transfer the client trades, or groups of client trades, corresponding to those clearing member client contracts,

(e) action taken to transfer qualifying collateral arrangements in conjunction with a transfer of clearing member client contracts as mentioned in paragraph (c) or a transfer of client trades as mentioned in paragraph (d), and

(f) qualifying property transfers,

subject to the provisions of sections 159 to 165.";

(b) in subsection (2)(b) after "proceedings in respect of a party to a market contract" insert "other than a client trade which are"; and

(c) in subsection (4) after "mentioned in" insert "paragraphs (a) to (d) of".

(6) In section 159 (proceedings of exchange or clearing house take precedence over insolvency procedures)(**a**)—

(a) in subsection (1)(c)—

(i) for "recognised investment exchange or recognised clearing house" substitute "recognised investment exchange, or of a recognised clearing house which is not a recognised central counterparty,";

(ii) for "under its default rules." substitute "under its default rules,";

(b) after subsection (1)(c) insert—

"(d) the rules of a recognised central counterparty on which the recognised central counterparty relies to give effect to the transfer of a clearing member client contract, or the settlement of a clearing member client contract or clearing member house contract, in accordance with its default rules,

(e) a transfer of a clearing member client contract, or the settlement of a clearing member client contract or a clearing member house contract, in accordance with the default rules of a recognised central counterparty,

(f) where a clearing member client contract transferred in accordance with the default rules of a recognised central counterparty was entered into by the clearing member as principal, a transfer of the client trade or group of client trades corresponding to that clearing member client contract,

(g) a transfer of a qualifying collateral arrangement in conjunction with the transfer of clearing member client contract as mentioned in paragraph (e) or of a client trade as mentioned in paragraph (f), or

(h) a qualifying property transfer.";

(c) in subsection (2) for "or the Bankruptcy (Scotland) Act 1985" substitute ", the Bankruptcy (Scotland) Act 1985(**b**), Part 10 of the Building Societies Act 1986(**c**), Parts 2 and 3 of the Banking Act 2009(**d**) or under regulations made under section 233 of that Act,";

(**a**) Section 159(1) was amended by S.I. 2009/853.
(**b**) 1985 c.66.
(**c**) 1986 c.53.
(**d**) 2009 c.1.

(d) in subsection (2)(a)—

(i) after "investment exchange" insert ",";

(ii) after "clearing house" insert "which is not a recognised central counterparty,";

(iii) omit "or";

(e) in subsection (2)(b)—

(i) for "such an exchange" substitute "a recognised investment exchange,";

(ii) for "clearing house." substitute "clearing house which is not a recognised central counterparty,"; and

(f) after subsection (2)(b) insert—

"(c) the transfer of a clearing member client contract, or the settlement of a clearing member client contract or a clearing member house contract, in accordance with the default rules of a recognised central counterparty,

(d) where a clearing member client contract transferred in accordance with the default rules of a recognised central counterparty was entered into by the clearing member as principal, the transfer of the client trade or group of client trades corresponding to that clearing member contract,

(e) the transfer of a qualifying collateral arrangement in conjunction with a transfer of a clearing member client contract as mentioned in paragraph (c), or a transfer of a client trade as mentioned in paragraph (d),

(f) any action taken to give effect to any of the matters mentioned in paragraphs (c) to (e), or

(g) any action taken to give effect to a qualifying property transfer.".

(7) In section 162 (duty to report on completion of default proceedings)(**a**)—

(a) in subsection (1) after "or debtor the sum" insert "or sums"; and

(b) after subsection (1A) insert—

"(1B) The report under subsection (1) need not deal with a clearing member client contract which has been transferred in accordance with the default rules of a recognised central counterparty.".

(8) In section 163 (net sum payable on completion of default proceedings) for subsection (1) substitute—

"(1) The following provisions apply with respect to a net sum certified by a recognised investment exchange or recognised clearing house under its default rules to be payable by or to a defaulter.".

(9) In section 164 (disclaimer of property, rescission of contracts, etc)(**b**)—

(a) in subsection (1)(a) omit "or";

(b) after subsection (1)(a) insert—

"(aa) a qualifying collateral arrangement,

(ab) a transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement, as mentioned in paragraphs (c) to (e) of section 158(1),

(ac) a qualifying property transfer, or";

(c) after subsection (3)(ba) insert—

"(bb) a qualifying collateral arrangement,

(**a**) Section 162(1) was amended by S.I. 1991/880, S.I. 2001/3649 and by paragraph 66 of Schedule 18 to the Financial Services Act 2012 (c.21); section 162(1A) was inserted by S.I. 1991/880 and amended by S.I. 2001/3649 and by paragraph 66 of Schedule 18 to the Financial Services Act 2012; subsection 162(7) was inserted by paragraph 66 of Schedule 18 to the Financial Services Act 2012.

(**b**) Section 164 was amended by S.I. 2009/853.

(bc) a transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement, as mentioned in paragraphs (c) to (e) of section 158(1),

(bd) a qualifying property transfer"; and

(d) for subsection (5) substitute—

"(5) Subsection (4)(a) does not apply where the person entering into the contract is a recognised investment exchange or recognised clearing house acting in accordance with its rules, or where the contract is effected under the default rules of such an exchange or clearing house; but subsection (4)(b) applies in relation to the provision of—

(a) margin in relation to any such contract, unless the contract has been transferred in accordance with the default rules of the central counterparty, or

(b) default fund contribution.".

(10) In section 165 (adjustment of prior transactions)(**a**)—

(a) in subsection (3)(a) omit "and";

(b) for subsection (3)(b) substitute—

"(ab) a market contract to which this Part applies by virtue of section 155(2B), and

(b) a disposition of property in pursuance of a market contract referred to in paragraph (a) or (ab).";

(c) in subsection (4) after "by virtue of subsection (3)(a)" insert ", (3)(ab)";

(d) after subsection (4)(a) insert—

"(ab) a qualifying collateral arrangement,";

(e) in subsection (5)(b) omit "and";

(f) in subsection (5)(c) for "contribution." substitute "contribution,"; and

(g) after subsection (5)(c) insert—

"(d) a transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement as mentioned in paragraphs (c) to (e) of section 158(1), and

(e) a qualifying property transfer.".

(11) In section 166 (powers of Secretary of State to give directions)(**b**)—

(a) in subsection (1) for "recognised UK clearing house" substitute "recognised clearing house";

(b) after subsection (3) insert—

"(3A) The appropriate regulator may give a direction to a relevant office-holder appointed in respect of a defaulting clearing member to take any action, or refrain from taking any action, if the direction is given for the purposes of facilitating—

(a) the transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement, or

(b) a qualifying property transfer.

(3B) The relevant office-holder to whom a direction is given under subsection (3A)—

(a) must comply with the direction notwithstanding any duty on the relevant office-holder under any enactment relating to insolvency, but

(b) is not required to comply with the direction given if the value of the clearing member's estate is unlikely to be sufficient to meet the office-holder's reasonable expenses of complying.

(**a**) Section 165(4) was amended by S.I. 2009/853 and section 165(5) was inserted by S.I. 2009/853.

(**b**) Section 166 was amended by S.I. 2001/3649 and by section 111 of the Financial Services Act 2012 and subsection 166(9) was inserted by section 111 of the Financial Services Act 2012.

(3C) The expenses of the relevant office-holder in complying with a direction of the regulator under subsection (3A) are recoverable as part of the expenses incurred in the discharge of the office-holder's duties.";

(c) in subsection (8) for "or clearing house" substitute ", a clearing house or a relevant office-holder"; and

(d) in subsection (9)(b) for "recognised UK clearing house" substitute "recognised clearing house".

(12) After section 170 (certain overseas exchanges and clearing houses) insert—

"EEA central counterparties and third country central counterparties

170A.—(1) In this section and section 170B—

(a) "assets" has the meaning given by Article 39(10) of the EMIR Level 1 Regulation;

(b) "EBA" means the European Banking Authority established by Regulation 1093/2010/EU of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority)(**a**);

(c) "ESMA" means the European Securities and Markets Authority established by Regulation 1095/2010/EU of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)(**b**);

(d) "overseas competent authority" means a competent authority responsible for the authorisation or supervision of clearing houses or central counterparties in a country or territory other than the United Kingdom;

(e) "relevant provisions" means any provisions of the default rules of an EEA central counterparty or third country central counterparty which—

(i) provide for the transfer of the positions or assets of a defaulting clearing member;

(ii) are not necessary for the purposes of complying with the minimum requirements of Articles 48(5) and (6) of the EMIR Level 1 Regulation; and

(iii) may be relevant to a question falling to be determined in accordance with the law of a part of the United Kingdom;

(f) "relevant requirements" means the requirements specified in paragraph 34(2) (portability of accounts: default rules going beyond requirements of EMIR) of Part 6 of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(**c**);

(g) "UK clearing member" means a clearing member to which the law of a part of the United Kingdom will apply for the purposes of an insolvent reorganisation or winding up.

(2) This Part applies to transactions cleared through an EEA central counterparty or a third country central counterparty by a UK clearing member as it applies to transactions cleared through a recognised central counterparty, but subject to the modifications in subsections (3) to (5).

(3) For section 157 there is to be substituted—

"**Change in default rules**

157.—(1) An EEA central counterparty or a third country central counterparty in respect of which an order under section 170B(4) has been made and not revoked

(**a**) OJ No L331, 15.12.2010, p.12.
(**b**) OJ No L331, 15.12.2010, p.84.
(**c**) S.I. 2001/995.

must give the Bank of England at least three months' notice of any proposal to amend, revoke or add to its default rules.

(2) The Bank of England may, if it considers it appropriate to do so, agree a shorter period of notice.

(3) Where notice is given to the Bank of England under subsection (1) an EEA central counterparty or third country central counterparty must provide the Bank of England with such information, documents and reports as the Bank of England may require.

(4) Information, documents and reports required under subsection (3) must be provided in English and be given at such times, in such form and at such place, and verified in such a manner, as the Bank of England may direct.".

(4) Section 162 does not apply to an EEA central counterparty or a third country central counterparty unless it has been notified by the Bank of England that a report under that section is required for the purposes of insolvency proceedings in any part of the United Kingdom.

(5) In relation to an EEA central counterparty or third country central counterparty, references in this Part to the "rules" or "default rules" of the central counterparty are to be taken not to include references to any relevant provisions unless—

(a) the relevant provisions satisfy the relevant requirements; or

(b) the Bank of England has made an order under section 170B(4) recognising that the relevant provisions of its default rules satisfy the relevant requirements and the order has not been revoked.

EEA central counterparties and third country central counterparties: procedure

170B.—(1) An EEA central counterparty or third country central counterparty may apply to the Bank of England for an order recognising that the relevant provisions of its default rules satisfy the relevant requirements.

(2) The application must be made in such manner, and must be accompanied by such information, documents and reports, as the Bank of England may direct.

(3) Information, documents and reports required under subsection (2) must be provided in English and be given at such times, in such form and at such place, and verified in such manner, as the Bank of England may direct.

(4) The Bank of England may make an order recognising that the relevant provisions of the default rules satisfy the relevant requirements.

(5) The Bank of England may by order revoke an order made under subsection (4) if—

(a) the EEA central counterparty or third country central counterparty consents;

(b) the EEA central counterparty or third country central counterparty has failed to pay a fee which is owing to the Bank of England under paragraph 36 of Schedule 17A to the Financial Services and Markets Act 2000;

(c) the EEA central counterparty or third country central counterparty is failing or has failed to comply with a requirement of or imposed under section 157 (as modified by section 170A(3)); or

(d) it appears to the Bank of England that the relevant provisions no longer satisfy the relevant requirements.

(6) An order made under subsection (4) or (5) must state the time and date when it is to have effect.

(7) An order made under subsection (5) may contain such transitional provision as the Bank of England considers appropriate.

(8) The Bank of England must—

(a) maintain a register of orders made under subsection (4) which are in force; and

(b) publish the register in such manner as it appears to the Bank of England to be appropriate.

(9) Section 298 of the Financial Services and Markets Act 2000(**a**) applies to a refusal to make an order under subsection (4) or the making of a revocation order under subsection (5)(b), (c) or (d) as it applies to the making of a revocation order under section 297(2) of the Financial Services and Markets Act 2000(**b**), but with the following modifications—

(a) for "appropriate regulator"(**c**) substitute "the Bank of England";

(b) for "recognised body" substitute "EEA central counterparty or third country central counterparty"; and

(c) in subsection (7), for "give a direction under section 296" substitute "make an order under paragraph (b), (c) or (d) of section 170B(5) of the Companies Act 1989".

(10) If the Bank of England refuses to make an order under subsection (4) or makes an order under subsection (5)(b), (c) or (d), the EEA central counterparty or third country central counterparty may refer the matter to the Upper Tribunal.

(11) The Bank of England may rely on information or advice from an overseas competent authority, the EBA or ESMA in its determination of an application under subsection (1) or the making of a revocation order under subsection (5)(d).".

(13) For section 175(5) (administration orders, etc) substitute—

"(5) However, if a person who is party to a disposition mentioned in subsection (4) has notice at the time of the disposition that a petition has been presented for the winding up or bankruptcy or sequestration of the estate of the party making the disposition, the value of any profit to him arising from the disposition is recoverable from him by the relevant office-holder unless—

(a) the person is a chargee under the market charge,

(b) the disposition is made in accordance with the default rules of a recognised central counterparty for the purposes of transferring a position or asset of a clearing member in default, or

(c) the court directs otherwise.".

(14) After section 175(5) insert—

"(5A) In subsection (5)(b), "asset" has the meaning given by Article 39(10) of the EMIR Level 1 Regulation.".

(15) After section 182 (powers of court in relation to certain proceedings begun before commencement) insert—

"Recognised central counterparties: disapplication of provisions on mutual credit and set-off

182A.—(1) 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 recognised central counterparty and held for the account of a client, an indirect client or a group of clients or indirect clients in accordance with Article 39 of the EMIR Level 1 Regulation or Article 3(1) of the EMIR Level 2 Regulation; and

(b) positions and assets recorded in any other account at the recognised central counterparty.".

(**a**) Section 298 was amended by S.I. 2007/126.
(**b**) Section 297 was amended by S.I. 2007/126 and S.I. 2012/916.
(**c**) In section 298, "appropriate regulator" was substituted for "Authority" by section 35 of, and paragraph 16(b) of Schedule 8 to, the Financial Services Act 2012.

(16) After section 187(2) (construction of references to parties to market contracts) insert—

"(2A) Subsections (1) and (2) do not apply to market contracts to which this Part applies by virtue of section 155(2B).".

(17) In section 188 (meaning of "default rules" and related expressions)(**a**)—

(a) in subsection (1) for "connected with the exchange or clearing house." substitute "connected with the exchange or clearing house, and in the case of a recognised central counterparty, "default rules" includes the default procedures referred to in Article 48 of the EMIR Level 1 Regulation."; and

(b) in subsection (2) after "in this Part to "default"" insert ", "defaulting" and "non-defaulting"".

(18) In section 190 (minor definitions)(**b**)—

(a) in subsection (1) insert at the appropriate place in each case—

""clearing member", in relation to a recognised central counterparty, has the meaning given by Article 2(14) of the EMIR Level 1 Regulation;

"client" has the meaning given by Article 2(15) of the EMIR Level 1 Regulation;

"EMIR Level 1 Regulation" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

"EMIR Level 2 Regulation" means Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, risk mitigation for OTC derivatives contracts not cleared by a CCP(**c**);

"indirect client" has the meaning given by Article 1(a) of the EMIR Level 2 Regulation;

"member of a clearing house" includes a clearing member of a recognised central counterparty;

"position" has the same meaning as in the EMIR Level 1 Regulation;";

(b) in subsection (1)—

(i) for the definition of ""recognised clearing house" and "recognised investment exchange"" substitute ""recognised central counterparty", "recognised clearing house" and "recognised investment exchange" have the same meaning as in the Financial Services and Markets Act 2000;"; and

(ii) for the definition of "UK" substitute ""UK", in relation to an investment exchange, means having its head office in the United Kingdom.";

(c) for subsection (2) substitute—

"(2) References in this Part to settlement—

(a) mean, in relation to a market contract, the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise;

(b) include, in relation to a clearing member client contract or a clearing member house contract, a reference to its liquidation for the purposes of Article 48 of the EMIR Level 1 Regulation.";

(d) after subsection (3) insert—

"(3A) In this Part, a reference to a transfer of a clearing member client contract or a client trade includes—

(**a**) Section 188(1) was amended by S.I. 2009/853.
(**b**) Section 190 was amended by S.I. 2001/3649 and by paragraph 70 of Schedule 18 to the Financial Services Act 2012.
(**c**) OJ No L 52, 23.2.2013, p.11.

(a) an assignment;

(b) a novation; and

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

and a reference to a transfer of a qualifying collateral arrangement includes an assignment or a novation."; and

(e) for subsection (6) substitute—

"(6) References in this Part to the law of insolvency—

(a) include references to every provision made by or under the Insolvency Act 1986 or the Bankruptcy (Scotland) Act 1985; and in relation to a building society references to insolvency law or to any provision of the Insolvency Act 1986 are to that law or provision as modified by the Building Societies Act 1986;

(b) are also to be interpreted in accordance with the modifications made by the enactments mentioned in subsection (6B).

(6A) For the avoidance of doubt, references in this Part to administration, administrator, liquidator and winding up are to be interpreted in accordance with the modifications made by the enactments mentioned in subsection (6B).

(6B) The enactments referred to in subsections (6)(b) and (6A) are—

(a) article 3 of, and the Schedule to, the Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009(**a**);

(b) article 18 of, and paragraphs 1(a), (2) and (3) of Schedule 2 to, the Building Societies (Insolvency and Special Administration) Order 2009(**b**); and

(c) regulation 27 of, and Schedule 6 to, the Investment Bank Special Administration Regulations 2011(**c**).".

(19) In section 191 (index of defined expressions)(**d**) for the Table substitute the Table in the Schedule to these Regulations.

(20) In section 213(5)(d) (provisions extending to Northern Ireland), for "sections 170 to 172" substitute "sections 170 and 172".

PART 4

Amendments to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001

Amendments to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001

5.—(1) The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(**e**) are amended as follows.

(2) In regulation 3—

(a) in paragraph (1)(**f**)—

(i) omit—

(**a**) S.I. 2009/317.
(**b**) S.I. 2009/805; paragraph 3 of Schedule 2 was amended by S.I. 2010/1189.
(**c**) S.I. 2011/245.
(**d**) Section 191 was amended by S.I. 2001/3649, S.I. 2009/853 and paragraph 71 of Schedule 18 to the Financial Services Act 2012.
(**e**) S.I. 2001/995.
(**f**) In regulation 3(1), the definitions of "central counterparty", "clearing" and "settlement" were inserted by S.I. 2006/3386.

""central counterparty", "clearing" and "settlement" have the same meaning as in the markets in financial instruments directive;";

(ii) in the definition of "exempt activities" for "section 285(2) or (3)" substitute "any of subsections (2) to (3A) of section 285";

(iii) insert in the appropriate place—

""settlement" has the same meaning as in the markets in financial instruments directive; ";

(b) after paragraph (1) insert—

"(1A) In Part 1 of the Schedule, in paragraph 21A in Part 3 of the Schedule(**a**) and in paragraph 31 in Part 5 of the Schedule, "clearing" has the same meaning as in the markets in financial instruments directive.".

(3) In regulation 5—

(a) in the heading, after "clearing houses" insert "which are not central counterparties";

(b) for "section 290(1)(b)" substitute "section 290(1)(c)";

(c) for "section 288" substitute "section 288(1A)".

(4) After regulation 5 insert—

"**Recognition requirements for central counterparties**

5A. Parts 5 and 6 of the Schedule set out recognition requirements applying to bodies in respect of which a recognition order has been made under section 290(1)(b) of the Act, or which have applied for such an order under section 288(1) of the Act.".

(5) In paragraph 21A(1) in Part 3 of the Schedule omit "central counterparty,".

(6) After Part 4 of the Schedule insert—

"PART 5

Recognition requirements for central counterparties

Requirements of the EMIR regulation

29. A central counterparty providing clearing services must meet the requirements set out in the EMIR regulation (within the meaning of section 313 of the Act).

Market abuse or financial crime

30. The central counterparty must ensure that appropriate measures are adopted to reduce the extent to which its facilities can be used for a purpose connected with market abuse or financial crime, and to facilitate their detection and monitor their incidence.

Access to central counterparty, clearing and settlement facilities

31.—(1) The central counterparty must make transparent and non-discriminatory rules, based on objective criteria, governing access to central counterparty, clearing or settlement facilities provided by it.

(2) The rules under sub-paragraph (1) must enable an investment firm or a credit institution authorised by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have access to those facilities on the same terms as a UK firm for the purposes of finalising or arranging the finalisation of transactions in financial instruments.

(3) The central counterparty may refuse access to those facilities on legitimate commercial grounds.

(**a**) Paragraph 21A of the Schedule was inserted by S.I. 2006/3386.

PART 6

Recognition requirements applying to central counterparties: default rules

Introduction

32. This Part sets out recognition requirements which apply to the default rules of a central counterparty.

Interpretation

33. In this Part—

(a) "assets" has the meaning given by Article 39(10) of the EMIR Level 1 Regulation;

(b) "clearing member" has the meaning given by Article 2(14) of the EMIR Level 1 Regulation;

(c) "client" has the meaning given by section 190(1) of the Companies Act 1989(**a**);

(d) "default rules" has the meaning given by section 188(1) of the Companies Act 1989(**b**);

(e) "defaulting" has the meaning given by section 188(2) of the Companies Act 1989;

(f) "EMIR Level 1 Regulation" means Regulation (EU) No 648/2012 of 4 July 2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

(g) "indirect client" has the meaning given by section 190(1) of the Companies Act 1989;

(h) "position" has the has the meaning given by section 190(1) of the Companies Act 1989.

Portability of accounts: default rules going beyond requirements of EMIR

34.—(1) Sub-paragraph (2) applies to any provisions of the default rules which—

(a) provide for the transfer of the positions or assets of a defaulting clearing member;

(b) are not necessary for the purposes of complying with the minimum requirements of Articles 48(5) and (6) of the EMIR Level 1 Regulation; and

(c) may be relevant to a question falling to be determined in accordance with the law of a part of the United Kingdom.

(2) Where this sub-paragraph applies to any provisions of the default rules, the default rules must—

(a) include a summary of how a transfer under the provisions will work and its main legal implications (including information on the applicable insolvency law in the relevant jurisdictions), or a clear and prominent reference to the place where such a summary can be directly and easily accessed by the public;

(b) ensure that a position or asset cannot be transferred under the provisions without the consent of—

(i) the person for whose account the position or asset is held; and

(ii) the clearing member to whom the position or asset is transferred;

(c) ensure that any transfer under the provisions is fair to clients and indirect clients; and

(d) specify a pre-defined transfer period within which a transfer under the provisions must take place.

(**a**) The definitions of "client", "indirect client" and "position" in section 190(1) were inserted by regulation 4(18)(a) of these regulations.

(**b**) Section 188(1) was amended by S.I. 2009/853 and by regulation 4(17)(a) of these regulations; section 188(2) was amended by regulation 4(17)(b) of these regulations.

(3) For the purposes of sub-paragraph (2)(a), a clear and prominent reference to a place where a summary can be directly and easily accessed by the public may be provided by way of a direct internet link to an appropriate internet site.

(4) For the purposes of sub-paragraph (2)(b), consent may be given in advance of a default (such as by means of suitable provision in the default rules).

Liquidation of accounts

35. The default rules must contain provision ensuring that, after the liquidation of an account and the return of any collateral to clients or to a clearing member for the account of the clearing member's clients, the amount of any other net sum payable or, as the case may be, the fact that no other net sum is payable, in respect of that account will be certified for the purposes of section 163 of the Companies Act 1989(**a**).".

PART 5

Designation of competent authorities and powers of FCA

Designation of competent authorities

6.—(1) The Bank is responsible for all functions of the competent authority for central counterparties imposed by the EMIR regulation, including—

(a) functions under Title 2 (clearing, reporting and risk mitigation of OTC derivatives);

(b) functions under Title 3 (authorisation and supervision of central counterparties) and in particular Article 22(1);

(c) functions under Title 4 (requirements for central counterparties);

(d) functions under Title 5 (interoperability arrangements);

(e) the function under Article 81(3)(c) (transparency and data availability);

(f) functions under Article 89(3) to (5) (transitional provision); and

(g) supervision of the obligations imposed on central counterparties by that Regulation.

(2) The Bank is responsible for the purposes of the second sub-paragraph of Article 22(1) of the EMIR regulation for coordinating cooperation and the exchange of information.

(3) The FCA is responsible for all functions of the competent authority for financial counterparties, non-financial counterparties and trading venues imposed by the EMIR regulation, including—

(a) except where paragraph (8)(a) applies, supervision of the obligations imposed on financial counterparties, non-financial counterparties and trading venues by Title 2;

(b) considering notifications under Article 4(2) (clearing obligation: exemption in relation to intragroup transactions);

(c) acting as competent authority for the purposes of Article 10(5) (non-financial counterparties: requirements in relation to OTC derivative contracts);

(d) considering notifications and determining applications under Article 11(5) to (10) (risk mitigation techniques for OTC derivative contracts not cleared by a central counterparty: exemptions) and the functions referred to in Article 11(11);

(e) the function under Article 18(2)(d) (college membership);

(f) the function under Article 25(3)(c) (ESMA consultation in relation to recognition of third country central counterparty); and

(g) the function under Article 81(3)(d) (transparency and data availability).

(**a**) Section 163 was amended by S.I. 2009/853.

(4) The FCA is responsible for the supervision of clearing members of a central counterparty for the purposes of the EMIR regulation, including functions under—

(a) Article 18(2)(c) (college membership);

(b) Article 25(3)(b) (ESMA consultation in relation to recognition of third country central counterparty);

(c) Article 48(3) (default procedures: supervision of defaulting clearing member); and

(d) Article 52(1) (risk management).

(5) The FCA is responsible for the supervision of the obligations imposed by the EMIR regulation on entities referred to in Article 4(1)(a)(v) of the EMIR regulation (third country entities).

(6) The FCA is responsible for all functions of the competent authority in relation to trade repositories imposed by the EMIR regulation, including functions under—

(a) Title 6 (registration and supervision of trade repositories) including Article 71(3);

(b) Title 7 (requirements for trade repositories); and

(c) Article 89(6) and (7) (transitional provision).

(7) The FCA is the competent authority for the purposes of Article 89(2) of the EMIR regulation (transitional provisions in relation to pension scheme arrangements).

(8) The PRA is the competent authority responsible for—

(a) supervision of financial counterparties authorised by the PRA in relation to the obligations imposed by Article 11(3) and (4) of the EMIR regulation; and

(b) supervision of any clearing members of a central counterparty authorised by the PRA in relation to the following functions under the EMIR regulation—

(i) Article 18(2)(c);

(ii) Article 25(3)(b);

(iii) Article 48(3); and

(iv) Article 52(1).

(9) In this regulation, "supervision" includes monitoring, investigation and enforcement.

Power of the FCA to require information

7.—(1) In this regulation a "non-authorised counterparty" is—

(a) a financial counterparty which is not an authorised person; or

(b) a non-financial counterparty.

(2) Where—

(a) a non-authorised counterparty is subject to an obligation under the EMIR regulation, or

(b) it is necessary for the FCA to determine whether a person is subject to an obligation under the EMIR regulation,

paragraph (3) applies.

(3) The FCA may, by notice in writing, require the counterparty or person—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description,

so that it can verify whether the non-authorised counterparty or person has complied with, or is subject to, the EMIR regulation.

(4) The information or documents must be provided or produced—

(a) before the end of such reasonable period as may be specified;

(b) at such place as may be specified.

(5) This regulation applies only to information and documents reasonably required in connection with the exercise by the FCA of its functions under the EMIR regulation.

(6) The FCA may require any information provided under this regulation to be provided in such a form as it may reasonably require.

(7) The FCA may require—

(a) any information provided, whether in a document or otherwise, to be verified in such a manner, or

(b) any document produced to be authenticated in such a manner,

as it may reasonably require.

(8) A requirement imposed under this regulation is a "relevant requirement" for the purposes of sections 380 (injunctions) and 382 (restitution orders) of the Act(**a**).

(9) In this regulation, "specified" means specified in the notice.

Applications and notifications to FCA

8.—(1) Paragraphs (2) and (5) to (8) apply—

(a) where a person ("P") is seeking exemption from the clearing obligation as set out in Article 4(1) or 10(1) of the EMIR regulation in reliance on Article 4(2), 10(2) or 89(2) of that Regulation; or

(b) to a notification to the FCA under Article 10(1)(a) of the EMIR regulation.

(2) An application or notification to the FCA must—

(a) be made in such manner as the FCA may direct; and

(b) contain, or be accompanied by, such other information as the FCA may reasonably require.

(3) Paragraphs (4) to (8) apply where a person ("P") is seeking exemption from the risk management procedures as set out in Article 11(3) of the EMIR regulation in reliance on Article 11(6), (7), (8), (9) or (10) of that Regulation.

(4) An application or notification to the FCA must contain, or be accompanied by, such information in addition to any information required to be provided under the EMIR regulation as the FCA may reasonably require.

(5) At any time after receiving an application or notification and before determining it, the FCA may require P to provide it with such further information as it reasonably considers necessary to enable it to determine the application or consider the notification.

(6) Different directions may be given, and different requirements imposed, in relation to different applications or notifications or categories of application or notification.

(7) The FCA may require P to provide information under this regulation in such form, or to verify it in such a way, as the FCA may reasonably direct.

(8) A requirement imposed under this regulation is a "relevant requirement" for the purposes of sections 380 (injunctions) and 382 (restitution orders) of the Act.

Penalties

9.—(1) If the FCA considers that—

(a) a financial counterparty;

(b) a non-financial counterparty; or

(c) any other person,

(**a**) Sections 380 and 382 were amended by Schedule 9 to the Financial Services Act 2012 and S.I. 2007/126, 2011/1613 and 2012/1906 and 2554.

has contravened a relevant requirement imposed on it, the FCA may impose on it a penalty, in respect of the contravention, of such amount as it considers appropriate.

(2) If the FCA considers that—

(a) a financial counterparty;

(b) a non-financial counterparty; or

(c) any other person,

has in purported compliance with a requirement imposed on it under regulation 7 or 8 knowingly or recklessly given the FCA information which is false or misleading in a material particular, the FCA may impose on it a penalty of such amount as it considers appropriate.

(3) Where the FCA has imposed a penalty under paragraph (1) or (2), it must in addition publish a statement to that effect unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

(4) A penalty under paragraph (1) or (2) is payable to the FCA.

(5) The FCA must in respect of each of its financial years pay to the Treasury any amounts received by it during the year by way of penalties imposed under this regulation.

(6) The Treasury may give directions to the FCA as to how the FCA is to comply with its duty under paragraph (5).

(7) The directions may in particular—

(a) specify the time when any payment is required to be made to the Treasury, or

(b) require the FCA to provide the Treasury at specified times with information relating to penalties that the FCA has imposed under this regulation.

(8) The Treasury must pay into the Consolidated Fund any sums received by them under this regulation.

(9) This regulation does not apply to an authorised person except in so far as it relates to a contravention of regulation 8.

(10) In this regulation, a "relevant requirement" means a requirement imposed—

(a) by or under the EMIR regulation if it is enforceable by the FCA pursuant to regulation 6;

(b) under regulation 7 or 8.

Penalties under regulation 9: procedure

10.—(1) If the FCA proposes to take action against a person under regulation 9, it must give the person concerned a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

(4) If, having considered any representations made in response to the warning notice, the FCA decides to take action against a person under regulation 9, it must without delay give the person concerned a decision notice.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) If the FCA decides to take action against a person under regulation 9, the person may refer the matter to the Tribunal.

(8) Sections 210 (statements of policy) and 211 (statements of policy: procedure) of the Act(**a**) apply in respect of the imposition of penalties under regulation 9 and the amount of such penalties

(**a**) Section 210 was amended by Schedule 2 to the Financial Services Act 2010 and Schedule 9 to the Financial Services Act 2012. Section 211 was amended by Schedule 9 to the Financial Services Act 2012.

as they apply in respect of the imposition of penalties under Part 14 of the Act (disciplinary measures) and the amount of penalties under that Part.

(9) After a statement under regulation 9(3) is published, the FCA must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) of the Act(**a**) (as applied by regulation 56).

PART 6

Acquisition of control over recognised central counterparties

Interpretation of Part 6

11. In this Part—

"Article 31 notice" means a notification under the first sub-paragraph of Article 31(2) of the EMIR regulation;

"assessment period" means the period for assessment of an Article 31 notice established under Article 31 of the EMIR regulation;

"proposed acquisition" has the meaning given by the first sub-paragraph of Article 31(2) of the EMIR regulation;

"shares" has the meaning given by section 422 of the Act(**b**) (controller), but section 422A of the Act(**c**) (disregarded holdings) does not apply;

"voting power" has the meaning given by section 422 of the Act.

Procedure in relation to proposed acquisition

12.—(1) If the Bank gives a person ("P") notice under Article 31(5) of the EMIR regulation that it opposes a proposed acquisition, P may refer the Bank's decision to the Tribunal.

(2) The notice under Article 31(5) of the EMIR regulation—

(a) must inform P that P may make representations to the Bank within such period as may be specified in the notice (whether or not P has referred the matter to the Tribunal); and

(b) must inform P of P's right to refer the matter to the Tribunal, and give an indication of the procedure on such a reference.

(3) The Bank may extend the period allowed under the notice for making representations.

(4) If, having considered any representations made by P, the Bank decides to rescind the notice under Article 31(5) of the EMIR regulation, it must give P written notice.

(5) If, having considered any representations made by P, the Bank decides not to rescind the notice under Article 31(5) of the EMIR regulation, it must give P written notice which must comply with paragraph (2)(b).

Restriction notices

13.—(1) The Bank may give notice in writing (a "restriction notice") to a person ("P") in the following circumstances.

(2) The circumstances are that—

(a) P has taken a decision in relation to which P is required to give the Bank an Article 31 notice; and

(b) P has made the proposed acquisition—

(**a**) Section 393(4) was amended by Schedule 9 to the Financial Services Act 2012.
(**b**) Section 422 was substituted by S.I. 2009/534.
(**c**) Section 422A was inserted by S.I. 2009/534 and amended by S.I. 2011/1613.

(i) without giving the Article 31 notice,

(ii) before the expiry date of the assessment period (unless the Bank has approved the acquisition), or

(iii) in contravention of the Bank's decision under Article 31(5) of the EMIR regulation.

(3) In a restriction notice, the Bank may direct that shares or voting power to which the notice relates are, until further notice, subject to one or more of the following restrictions—

(a) except by court order, an agreement to transfer or a transfer of any such shares or voting power or, in the case of unissued shares, any agreement to transfer or transfer of the right to be issued with them, is void;

(b) no voting power is to be exercisable;

(c) no further shares are to be issued in pursuance of any right of the holder of any such shares or voting power or in pursuance of any offer made to their holder;

(d) except in a liquidation, no payment is to be made of any sums due from the body corporate on any such shares, whether in respect of capital or otherwise.

(4) A restriction notice takes effect—

(a) immediately; or

(b) on such date as may be specified in the notice.

(5) A restriction notice does not extinguish rights which would be enjoyable but for the notice.

(6) A copy of the restriction notice must be served on—

(a) P;

(b) the recognised central counterparty in question; and

(c) in the case of shares or voting power held in a parent undertaking of a recognised central counterparty, the parent undertaking.

(7) A person to whom the Bank gives a restriction notice may refer the matter to the Tribunal.

Orders for sale of shares

14.—(1) The court may, on the application of the Bank, order the sale of shares or the disposition of voting power in the following circumstances.

(2) The circumstances are that—

(a) a person ("P") has taken a decision in relation to which P is required to give the Bank an Article 31 notice; and

(b) P has made the proposed acquisition—

(i) without giving the Article 31 notice,

(ii) before the expiry date of the assessment period (unless the Bank has approved the acquisition), or

(iii) in contravention of the Bank's decision under Article 31(5) of the EMIR regulation.

(3) Where the court orders the sale of shares or disposition of voting power it may—

(a) if a restriction notice has been given in relation to the shares or voting power, order that the restrictions cease to apply; and

(b) make any further order.

(4) Where the court makes an order under this regulation, it must take into account the level of holding that P would have been entitled to acquire, or to continue to hold, without contravening the Bank's decision under Article 31(5) of the EMIR regulation.

(5) If shares are sold or voting power disposed of in pursuance of an order under this regulation, any proceeds, less the costs of the sale or disposition, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for payment of a whole or part of the proceeds.

(6) The jurisdiction conferred by this regulation may be exercised by the High Court.

Offences

15.—(1) A person who fails to comply with an obligation to notify the Bank under the Article 31 of the EMIR regulation is guilty of an offence.

(2) A person who gives an Article 31 notice to the Bank and makes the acquisition to which the notice relates before the expiry date of the assessment period is guilty of an offence unless the Bank has approved the acquisition.

(3) A person who makes an acquisition in contravention of the Bank's decision under Article 31(5) of the EMIR regulation is guilty of an offence.

(4) A person who makes an acquisition after the Bank's approval for the acquisition has ceased to be effective by virtue of the expiry of any period (including an extended period) fixed for concluding the acquisition under Article 31(7) is guilty of an offence.

(5) A person who provides information to the Bank which is false in a material particular is guilty of an offence.

(6) A person guilty of an offence under paragraph (1), (2), (4) or (5) is liable—

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

(7) A person guilty of an offence under paragraph (3) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(8) It is a defence for a person charged with an offence under paragraph (1) to show the person had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the Bank arose.

PART 7

Investigatory powers of ESMA with regard to trade repositories

Records of telephone and data traffic: Article 62(1)(e) of the EMIR regulation

16.—(1) ESMA must obtain authorisation from the High Court before any official of, or person authorised by, ESMA requests any records of telephone or data traffic under Article 62(1)(e) of the EMIR regulation from a person domiciled or established in the United Kingdom.

(2) The FCA must obtain authorisation from the High Court before requesting on behalf of ESMA any records of telephone or data traffic under Article 62(1)(e) of the EMIR regulation.

(3) The High Court may grant authorisation under paragraph (1) or (2) if satisfied, on an application made to the High Court in accordance with rules of court by ESMA or the FCA, that—

(a) ESMA has initiated an investigation under Article 62(1) of the EMIR regulation; and

(b) requiring the records of telephone or data traffic would be neither arbitrary nor excessive having regard to the subject matter of the investigation.

(4) The High Court must conduct the assessment referred to in paragraph (3) in accordance with Article 62(6) of the EMIR regulation, and may exercise the powers conferred by that paragraph for the purposes of making its assessment.

Inspections: Article 63 of the EMIR regulation

17.—(1) ESMA must obtain authorisation from the High Court before any official of, or person authorised by, ESMA carries out an Article 63 inspection.

(2) Where ESMA requires the FCA to carry out an Article 63 inspection on its behalf, the FCA must obtain authorisation from the High Court before carrying out that inspection.

(3) The High Court may grant authorisation for the purposes of paragraph (1) or (2) if satisfied, on an application made to the High Court in accordance with rules of court by ESMA or the FCA, that—

(a) ESMA has initiated an Article 63 inspection; and

(b) the Article 63 inspection would be neither arbitrary nor excessive having regard to the subject matter of the inspection.

(4) The High Court must conduct the assessment referred to in paragraph (3) in accordance with Article 63(9) of the EMIR regulation, and may exercise the powers conferred by that paragraph for the purposes of making its assessment.

(5) The High Court may issue a warrant if satisfied on information on oath given by or on behalf of ESMA or the FCA that there are reasonable grounds for believing that—

(a) the premises specified in the warrant are the business premises of any legal person referred to in Article 61(1) of the EMIR regulation; and

(b) the person referred to in sub-paragraph (a) has failed to comply with an Article 63 inspection, or would fail to comply with such an inspection if a warrant were not issued under this paragraph.

(6) A warrant issued under paragraph (5) shall authorise a constable—

(a) to enter the premises specified in the warrant;

(b) to search the premises for such records, data, procedures or other material as may be examined under Article 63(1) of the EMIR regulation, or such records of telephone or data traffic as ESMA or the FCA has been authorised to request under regulation 16(3), or to take, in relation to any such records, data, procedures or other material, any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of, or extracts from, any such records, data, procedures or other material;

(d) to seal any business premises and books or records in accordance with Article 63(2) of the EMIR regulation;

(e) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and

(f) to use such force as may be reasonably necessary.

(7) A warrant under this regulation may be executed by any constable.

(8) The warrant may authorise a named official of ESMA or the FCA and any other official or person authorised by ESMA or the FCA to accompany any constable who is executing it.

(9) The powers in paragraph (6) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.

(10) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984(**a**) (execution of search warrants and safeguards) apply to warrants issued under this regulation.

(**a**) 1984 c.60. Sections 15(5) to (8) and 16(3) to (12) were amended by paragraph 281 of Schedule 8 to the Courts Act 2003 (c.39), sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c.15) and S.I. 2005/3496.

(11) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989(**a**) apply to warrants issued under this regulation.

(12) In the application of this regulation to Scotland, for the references to information on oath substitute references to evidence on oath.

(13) In this regulation, an "Article 63 inspection" means an inspection initiated by decision of ESMA under Article 63 of the EMIR regulation.

Retention of documents taken under regulation 17

18.—(1) Any document of which possession is taken under regulation 17 ("a seized document") may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.

(2) A person claiming to be the owner of a seized document may apply to a magistrates' court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.

(3) If on an application under paragraph (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.

(4) An order under paragraph (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.

(5) Any right to bring proceedings (as described in paragraph (4)) may only be exercised within 6 months of the date of the order made under paragraph (2) or (3).

Offences: Article 63 inspections

19. Any person who intentionally obstructs the exercise of any rights conferred by a warrant under regulation 17(5) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.

PART 8

Consequential amendments

Amendments to the Finance Act 1991

20.—(1) The Finance Act 1991(**b**) is amended as follows.

(2) In section 116 (investment exchanges and clearing houses: stamp duty)—

(a) for subsection (1)(b) substitute—

"(b) involve a prescribed relevant entity, or a member or nominee (or member or nominee of a prescribed description) of such a relevant entity, or a nominee (or nominee of a prescribed description) of a member of such a relevant entity, and";

(b) at the end of subsection (4)(a) insert "and";

(c) for paragraphs (b) and (c) of subsection (4) substitute—

"(b) "relevant entity" means any of the following—

(**a**) S.I. 1989/1341 (N.I. 12), amended by S.I. 2007/288 (N.I. 2).

(**b**) 1991 c. 31; section 116 was amended by paragraph 5 of Schedule 20 to the Financial Services and Markets Act 2000 (c.8), paragraph 7 of Schedule 21 to the Finance Act 2007 (c.11) and section 65 of the Finance Act 2010 (c.13); section 117 was amended by section 65 of the Finance Act 2010.

(i) a regulated market and a multilateral trading facility (within the meaning of the Directive);

(ii) a recognised clearing house, a recognised investment exchange, an EEA central counterparty and a third country central counterparty (within the meaning of section 285 of the Financial Services and Markets Act 2000).".

(3) In section 117 (investments exchanges and clearing houses: SDRT) for subsection (1)(b) substitute—

"(b) involve a prescribed relevant entity, or a member or nominee (or member or nominee of a prescribed description) of such a relevant entity, or a nominee (or nominee of a prescribed description) of a member of such a relevant entity, and".

Amendment to the Pension Schemes Act 1993

21.—(1) The Pension Schemes Act 1993(**a**) is amended as follows.

(2) In section 149 (procedure on an investigation) in subsection (6)(l) for "or a recognised clearing house" substitute ", recognised clearing house, EEA central counterparty or third country central counterparty".

Amendment to the Pension Schemes (Northern Ireland) Act 1993

22.—(1) The Pension Schemes (Northern Ireland) Act 1993(**b**) is amended as follows.

(2) In section 145 (procedure on an investigation) in sub-section (6)(k) for "or a recognised clearing house" substitute ", recognised clearing house, EEA central counterparty or third country central counterparty".

Amendments to the Pensions Act 2004

23.—(1) The Pensions Act 2004(**c**) is amended as follows.

(2) In Schedule 3 (restricted information held by the regulator: certain permitted disclosures to facilitate exercise of functions) for the entry beginning "A recognised investment exchange or a recognised clearing house" substitute—

"A recognised investment exchange, recognised clearing house, EEA central counterparty or third country central counterparty (as defined by section 285 of that Act).	Functions in its capacity as an exchange, clearing house or central counterparty.".

(3) In Schedule 8 (restricted information held by the Board: certain permitted disclosures to facilitate exercise of functions) for the entry beginning "A recognised investment exchange or a recognised clearing house" substitute—

"A recognised investment exchange, recognised clearing house, EEA central counterparty or third country central counterparty (as defined by section 285 of that Act).	Functions in its capacity as an exchange, clearing house or central counterparty.".

Amendments to the Income Tax Act 2007

24.—(1) The Income Tax Act 2007(**d**) is amended as follows.

(2) In section 886 (interest paid by recognised clearing house)—

(a) in subsection (1)—

(**a**) 1993 c. 48; section 149 was substituted by S.I. 2001/3649.
(**b**) 1993 c. 49; section 145(6)(k) was substituted by S.I. 2001/3649.
(**c**) 2004 c. 35.
(**d**) 2007 c. 3; section 886 was amended by paragraph 24 of Schedule 14 to the Finance Act 2007.

(i) for "recognised clearing house ("RCH") or recognised investment exchange ("RIE")" substitute "relevant entity",

(ii) in paragraph (a) for "RCH or RIE" substitute "relevant entity";

(b) in subsection (2) for "an RCH or RIE" substitute "a relevant entity";

(c) in subsection (3)—

(i) in the definition of "central counterparty clearing service" for "an RCH or RIE", substitute "a relevant entity" and for "the RCH or RIE" substitute "the relevant entity";

(ii) omit the definition of ""recognised clearing house" and "recognised investment exchange"";

(iii) after the definition of "central counterparty clearing service" insert—

""relevant entity", means any of the following (as defined for the purposes of FISMA 2000 by section 285 of that Act)—

(a) a recognised clearing house;

(b) a recognised investment exchange;

(c) an EEA central counterparty;

(d) a third country central counterparty.".

Amendments to the Banking Act 2009

25.—(1) The Banking Act 2009(**a**) is amended as follows.

(2) Subject to the amendments made below, in every provision (including the headings) for "UK clearing house" or "UK clearing houses", wherever occurring, substitute "recognised central counterparty" or "recognised central counterparties".

(3) In sections 39A (banks which are clearing houses), 89C (clearing house rules), 89D (clearing house membership), 89F (clearing house compensation orders) and in the Table in section 259 (statutory instruments) (including in headings), for "clearing house", other than in the expression "UK clearing house", substitute "recognised central counterparty".

(4) In section 89E (recognition of transferee company), in subsection (1), for "recognised clearing house" substitute "recognised central counterparty".

(5) In section 89G (interpretation: "UK clearing house" etc.)—

(a) for subsection (1) substitute—

"(1) In this Part, "recognised central counterparty" has the meaning given by section 285 of the Financial Services and Markets Act 2000.";

(b) in subsection (2), for ""UK clearing house" does not include a clearing house" substitute ""recognised central counterparty" does not include a recognised clearing house";

(c) for subsection (3) substitute—

"(3) Where a stabilisation power is exercised in respect of a recognised central counterparty, the body does not cease to be a recognised central counterparty for the purposes of this Part if the recognition order under Part 18 of the Financial Services and Markets Act 2000 is later revoked.";

(d) in subsection (4) omit the definition of "central counterparty clearing services".

(6) In the Table in section 261 (index of defined terms)—

(a) omit the entry relating to "central counterparty clearing services";

(b) after the entry relating to "property transfer order" insert—

"recognised central counterparty | 89G";

(**a**) 2009 c.1, amended by section 102 of the Financial Services Act 2012.

(c) omit the entry relating to "UK clearing house".

Amendments to the Corporation Tax Act 2009

26.—(1) The Corporation Tax Act(**a**) is amended as follows.

(2) In section 697 (exceptions to section 696)—

(a) in subsection (1)(a) for "or recognised clearing house" substitute ", recognised clearing house, EEA central counterparty or third country central counterparty";

(b) in subsection (6) for the definition of "recognised clearing house" substitute—

""recognised clearing house", "EEA central counterparty" and "third country central counterparty" have the meanings given by section 285 of FISMA 2000 (exemptions for recognised investment exchanges and clearing houses),".

Amendment to the European Communities (Enforcement of Community Judgments) Order 1972

27.—(1) The European Communities (Enforcement of Community Judgments) Order 1972(**b**) is amended as follows.

(2) At the end of the definition of "Community judgment" in article 2(1), insert "or Article 65 or 66 of Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories(**c**)".

Amendment to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

28.—(1) The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(**d**) is amended as follows.

(2) In article 2—

(a) omit the definition of "UK recognised clearing house";

(b) insert at the appropriate place—

""recognised clearing house" means a recognised clearing house as defined in section 285 of the 2000 Act;".

(3) In article 3, in the Table, in paragraph (g)—

(a) for entry 6 substitute—

"6.	An associate of a UK recognised investment exchange or recognised clearing house.	The FCA, the PRA, or the Bank of England or the investment exchange or clearing house mentioned in the first column.";

(b) for paragraph (a) of entry 16 substitute—

"16.	(a)	Any member of a UK recognised investment exchange or recognised clearing house.	The UK recognised investment exchange or recognised clearing house specified in the first column.".

(4) In article 4—

(a) in paragraph (d)(x)—

(i) for "UK recognised clearing house" substitute "recognised clearing house";

(**a**) 2009 c. 4.
(**b**) S.I. 1972/1590; article 2(1) was amended by S.I. 1998/1259 and 2003/3204.
(**c**) OJ No L 201, 27.7.2012, p.1.
(**d**) S.I. 1975/1023; amended by S.I. 2001/3816.

(ii) after "section 292(2) of that Act," insert "to refuse to vary a recognition order under section 290ZA(1) of the 2000 Act, to vary a recognition order under section 290ZA(2) of the 2000 Act,";

(b) in paragraph (j) for "UK recognised clearing house" substitute "recognised clearing house".

Amendments to the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979

29.—(1) The Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979(**a**) is amended as follows.

(2) In Article 1(2)—

(a) omit the definition of "UK recognised clearing house";

(b) insert at the appropriate place—

""recognised clearing house" means a recognised clearing house as defined in section 285 of the 2000 Act;".

(3) In the Table in Article 2(e)—

(a) for entry 6 substitute—

"6.	An associate of a UK recognised investment exchange or recognised clearing house.	The FCA, the PRA or the Bank of England or the investment exchange or clearing house mentioned in the first column.";

(b) for paragraph (a) of entry 16 substitute—

"16.	(a)	Any member of a UK recognised investment exchange or recognised clearing house.	The UK recognised investment exchange or recognised clearing house specified in the first column.".

(4) In Article 3—

(a) in paragraph (d)(x)—

(i) for "UK recognised clearing house" substitute "recognised clearing house";

(ii) after "section 292(2) of that Act," insert "to refuse to vary a recognition order under section 290ZA(1) of the 2000 Act, to vary a recognition order under section 290ZA(2) of the 2000 Act,";

(b) in paragraph (j) for "UK recognised clearing house" substitute "recognised clearing house".

Amendments to the Financial Markets and Insolvency Regulations 1991

30.—(1) The Financial Markets and Insolvency Regulations 1991(**b**) are amended as follows.

(2) In regulation 7 insert at the appropriate place in each case—

""clearing member" has the same meaning as in section 190(1) of the Act;

"client" has the same meaning as in section 190(1) of the Act;

"indirect client" has the same meaning as in section 190(1) of the Act;

"recognised central counterparty" has the same meaning as in section 190(1) of the Act;
".

(3) In regulation 11(**c**)—

(**a**) SR 1979/195.
(**b**) S.I. 1991/880; regulation 7 was amended by S.I. 1999/1209 and S.I. 2009/853.
(**c**) S.I. 1991/880; regulation 11 was amended by S.I. 2009/853.

(a) after paragraph (a) insert—

"(aa) in the case of a recognised central counterparty, it secures the obligation to pay to the recognised central counterparty any sum due to it from a clearing member, a client, an indirect client, a recognised investment exchange or recognised clearing house in respect of unsettled market contracts to which the clearing member, client, indirect client, investment exchange or clearing house is a party;"; and

(b) in paragraph (b) for "in the case of a recognised UK clearing house" substitute "in the case of a recognised clearing house which is not a recognised central counterparty".

Amendments to the Income Tax (Manufactured Overseas Dividends) Regulations 1993

31.—(1) The Income Tax (Manufactured Overseas Dividends) Regulations 1993(**a**) are amended as follows.

(2) In regulation 5B(6)—

(a) in the definition of "central counterparty" after "recognised clearing house" insert ", EEA central counterparty, third country central counterparty";

(b) in the definition of "recognised clearing house" for "section 285" substitute "section 285(1)(b)";

(c) at the appropriate places insert—

""EEA central counterparty" has the meaning given by section 285(1)(c) of the Financial Services and Markets Act 2000;

"third country central counterparty" has the meaning given by section 285(1)(d) of the Financial Services and Markets Act 2000.".

Amendments to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999

32.—(1) The Financial Markets and Insolvency (Settlement Finality) Regulations 1999(**b**) are amended as follows.

(2) In regulation 2(**c**)—

(a) in paragraph (1)—

(i) at the appropriate place insert—

""administration" and "administrator" shall be interpreted in accordance with the modifications made by the enactments mentioned in paragraph (5);";

(ii) in the definition of "default arrangements"—

(aa) in sub-paragraph (b) omit "or";

(bb) in sub-paragraph (c) after "the application or transfer of collateral security;" insert "or"; and

(cc) after sub-paragraph (c) insert—

"(d) the transfer of assets or positions on the default of a participant in the system;";

(iii) in the definition of "winding up"—

(aa) omit sub-paragraph (c); and

(bb) after sub-paragraph (b) insert—

(**a**) S.I. 1993/2004; regulation 5B was inserted by S.I. 2011/2503.

(**b**) S.I. 1999/2979; regulation 2(1) was amended by Schedule 1 to the Bankruptcy (Scotland) Act 1993 (c. 6), S.I. 2002/1555, S.I. 2006/50, S.I. 2006/3221, S.I. 2007/108, S.I. 2007/126, S.I. 2010/2993 and by S.I. 2011/99.

(**c**) Regulation 2(2) was amended by S.I. 2006/50; regulation 6 was amended by S.I. 2002/1555 and by S.I. 2009/1972; regulation 7(2) was amended by S.I. 2002/1555 regulation 10 was amended by S.I. 2002/1555 and S.I. 2010/2993; regulation 13(4) was inserted by S.I. 2010/2993; regulation 20(1) was amended by S.I. 2010/2993.

"and shall be interpreted in accordance with the modifications made by the enactments mentioned in paragraph (5); and "liquidator" shall be construed accordingly.";

(b) in paragraph (2) for sub-paragraph (a) substitute—

"(a) references to the law of insolvency—

(i) include references to every provision made by or under the Bankruptcy (Scotland) Act 1985(**a**), Part 10 of the Building Societies Act 1986(**b**), the Insolvency Act 1986(**c**), the Insolvency (Northern Ireland) Order 1989(**d**) and in relation to a building society references to insolvency law or to any provision of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 are to that law or provision as modified by the Building Societies Act 1986;

(ii) shall also be interpreted in accordance with the modifications made by the enactments mentioned in paragraph (5);";

(c) after paragraph (4) insert—

"(5) The enactments referred to in the definitions of "administration", "administrator", "liquidator" and "winding up" in paragraph (1), and in paragraph (2)(a)(ii), are—

(a) article 3 of, and the Schedule to, the Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009(**e**);

(b) article 18 of, and paragraphs (1)(a), (2) and (3) of Schedule 2 to, the Building Societies (Insolvency and Special Administration) Order 2009(**f**);

(c) regulation 27 of, and Schedule 6 to, the Investment Bank Special Administration Regulations 2011(**g**).".

(3) In regulation 6—

(a) in paragraph (1) for "or recognised clearing house" substitute ", recognised clearing house, EEA central counterparty and third country central counterparty";

(b) after regulation 6(2) insert—

"(3) "EEA central counterparty" and "third country central counterparty" have the meanings given by section 285 of the 2000 Act.".

(4) In regulation 10—

(a) in paragraph (4) for "fourteen days'" substitute "three months'";

(b) after paragraph (4) insert—

"(4A) The designating authority may, if it considers it appropriate, agree a shorter period of notice.".

(5) In regulation 13(4)—

(a) for "include— " substitute "include winding up and administration.";

(b) omit sub-paragraphs (a) and (b).

(6) In regulation 20—

(a) in paragraph (1) for "conditions mentioned in paragraph (2)" substitute "conditions mentioned in either paragraph (2) or paragraph (4)";

(b) in paragraph (2) for "The conditions referred to in paragraph (1)" substitute "The conditions referred to in this paragraph";

(c) after paragraph (3) insert—

(**a**) 1985 c. 66.
(**b**) 1986 c. 53.
(**c**) 1986 c. 45.
(**d**) S.I. 1989/2405 (N.I. 19).
(**e**) S.I. 2009/317.
(**f**) S.I. 2009/805; paragraph 3 of Schedule 2 was amended by S.I. 2010/1189.
(**g**) S.I. 2011/245.

"(4) The conditions referred to in this paragraph are that—

(a) a recognised central counterparty, EEA central counterparty or third country central counterparty is the system operator;

(b) a clearing member of that central counterparty has defaulted; and

(c) the transfer order has been entered into the system pursuant to the provisions of the default rules of the central counterparty that provide for the transfer of the positions or assets of a clearing member on its default.

(5) In paragraph (4)—

(a) "recognised central counterparty", "EEA central counterparty" and "third country central counterparty" have the meanings given by section 285 of the 2000 Act; and

(b) "clearing member" has the meaning given by section 190(1) of the Companies Act 1989.".

Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

33.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**a**) is amended as follows.

(2) In article 3(1), in the appropriate place insert—

""trade repository" means a person registered with ESMA under Article 55 of Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories or a person recognised by ESMA under Article 77 of that Regulation;".

(3) In article 35(3) after sub-paragraph (b) insert—

"(ba) the body or association is also not eligible to become an EEA central counterparty (as defined in section 285(1)(c) of the Act) or a third country central counterparty (as defined in section 285(1)(d) of the Act);".

(4) After article 35 insert—

"**Trade repositories**

35A. A trade repository does not carry on an activity of the kind specified by article 25(2) by carrying on its functions of centrally collecting and maintaining records of derivatives under Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.".

(5) In article 72, after paragraph (8) insert—

"(9) Paragraphs (1) to (5) do not apply where the overseas person is providing clearing services as a central counterparty (within the meaning of section 313(1) of the Act).".

Amendment to the Financial Services and Markets Act 2000 (Exemption) Order 2001

34.—(1) The Financial Services and Markets Act 2000 (Exemption) Order 2001(**b**) is amended as follows.

(2) In Schedule 1, in paragraph 37(1), after "section 285(3)" insert "or (3A)".

(**a**) S.I. 2001/544; article 35 was amended by S.I. 2003/1476; article 72(8) was inserted by S.I. 2006/3384.
(**b**) S.I. 2001/1201; paragraph 37 of Schedule 1 was amended by S.I. 2001/3623.

Amendments to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

35.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**a**) are amended as follows.

(2) In regulation 2(**b**)—

(a) in the appropriate place insert—

"EMIR information" means confidential information received by one of the regulators in the course of discharging its functions as a competent authority under the EMIR regulation;

"the EMIR regulation" means Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;";

(b) in the definition of "EEA competent authority", after "single market directives" insert "or the EMIR regulation";

(c) in paragraph (b) of the definition of "overseas regulatory authority" for "or overseas clearing house" substitute ", overseas clearing house, EEA central counterparty (within the meaning of section 285(1)(c) of the Act) or third country central counterparty (within the meaning of section 285(1)(d) of the Act)";

(d) in the definition of "single market restrictions"—

(i) at the end of paragraph (j) omit "and";

(ii) at the end of paragraph (k) insert—

"; and

(l) article 83 of the EMIR regulation;".

(3) In regulation 8(**c**)—

(a) at the end of paragraph (a) omit "and";

(b) at the end of paragraph (b) insert—

"; and

(c) EMIR information, where that information has been received from the competent authority of an EEA State other than the United Kingdom under the EMIR regulation.".

(4) In regulation 9(**d**)—

(a) in paragraph (1), after "(3C)" insert ", (3E)";

(b) after paragraph (3D) insert—

"(3E) Paragraph (1) does not permit disclosure of EMIR information to a person specified in the first column of Schedule 1 in contravention of Article 83 of the EMIR regulation.".

(5) In regulation 11(**e**), after paragraph (e) insert—

"(f) EMIR information, where that information has been received from the competent authority of an EEA State other than the United Kingdom under the EMIR regulation, unless that authority has given its express consent for disclosure that is covered by this Part.".

(6) In Part 4 of Schedule 1—

(**a**) S.I. 2001/2188.

(**b**) The definition of "EEA competent authority" was amended by S.I. 2003/2066 and 2006/3413, and the definition of "single market restrictions" was inserted by S.I. 2012/916.

(**c**) Regulation 8 was substituted by S.I. 2006/3413 and amended by S.I. 2012/916.

(**d**) Regulation 9(1) was amended by S.I. 2006/3413, 2010/2628 and 2011/1613. Regulation 9(3D) was inserted by S.I. 2011/1613.

(**e**) Regulation 11 was amended by S.I. 2003/2066, 2006/3413, 2011/1613 and 2012/916.

(a) in the first column, in the entry beginning "A recognised clearing house" after "other than an overseas clearing house" insert ", an EEA central counterparty (within the meaning of section 285(1)(c) of the Act) or a third country central counterparty (within the meaning of section 285(1)(d) of the Act)";

(b) in the table, at the end, insert—

"An EEA central counterparty (within the meaning of section 285(1)(c) of the Act)	Its functions in relation to defaults or potential defaults by market participants".

(7) In Schedule 2, in the first column, in the entry beginning "A recognised clearing house" after "other than an overseas clearing house" insert ", an EEA central counterparty (within the meaning of section 285(1)(c) of the Act) or a third country central counterparty (within the meaning of section 285(1)(d) of the Act)".

Amendments to the Uncertified Securities Regulations 2001

36.—(1) The Uncertified Securities Regulations 2001(**a**) are amended as follows.

(2) In Schedule 1, in paragraph 5(7), in the definition of "clearing house"—

(a) in paragraph (b) omit "or";

(b) after paragraph (b) insert—

"(ba) which is an EEA central counterparty or a third country central counterparty within the meaning of section 285(1) of the 2000 Act; or".

Amendment to the Pension Protection Fund (PPF Ombudsman) Order (Northern Ireland) 2005

37.—(1) The Pension Protection Fund (PPF Ombudsman) Order (Northern Ireland) 2005(**b**) is amended as follows.

(2) In Article 5(2) for sub-paragraph (j) substitute—

"(j) a recognised investment exchange, a recognised clearing house, an EEA central counterparty or a third country central counterparty (as defined by section 285 of that Act); and".

Amendment to the Pension Protection Fund (PPF Ombudsman) Order 2005

38.—(1) The Pension Protection Fund (PPF Ombudsman) Order 2005(**c**) is amended as follows.

(2) In article 7(2) for sub-paragraph (j) substitute—

"(j) a recognised investment exchange, a recognised clearing house, an EEA central counterparty or a third country central counterparty (as defined by section 285 of that Act); and".

Amendment to the Financial Assistance Scheme (Appeals) Regulations 2005

39.—(1) The Financial Assistance Scheme (Appeals) Regulations 2005(**d**) are amended as follows.

(2) In regulation 28(3) for sub–paragraph (k) substitute—

"(k) a recognised investment exchange, recognised clearing house, EEA central counterparty or third country central counterparty (as defined by section 285 of that Act); and".

(**a**) S.I. 2001/3755.
(**b**) S.I. 2005/135; article 5 was amended by S.I 2005/342.
(**c**) S.I. 2005/824; article 7 was amended by S.I. 2005/2023 and S.I. 2008/2683.
(**d**) S.I. 2005/3273; regulation 28 was amended by S.I. 2008/2683.

Amendments to the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No.9) 2009

40.—(1) The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No.9) 2009(**a**) are amended as follows.

(2) In regulation 4(1) after "this regulation" insert "or in regulation 4A".

(3) After regulation 4 insert—

"**Alternative prescribed circumstances for the purposes of sections 116 and 117**

4A.—(1) The circumstances prescribed by this regulation are where, in connection with a facility transaction or an over the counter transaction, the conditions in paragraphs (2) and (3) are met.

(2) A clearing member client contract entered into by a defaulting clearing participant ("DCP") is transferred from the DCP to a non-defaulting clearing participant in accordance with the default rules of LCH.Clearnet Limited.

(3) The clearing member client contract referred to in paragraph (2) does not represent the end transaction in the clearing of that contract either before or after the transfer.

(4) For the purpose of this regulation—

"clearing member client contract" has the same meaning as in section 155 of the Companies Act 1989;

"default rules" and "defaulting" have the same meaning as in section 188 of the Companies Act 1989.".

Amendments to the Investment Bank Special Administration Regulations 2011

41.—(1) The Investment Bank Special Administration Regulations 2011(**b**) are amended as follows.

(2) In regulation 2(1)—

(a) in the definition of "market infrastructure body", after "recognised investment exchange" insert ", EEA central counterparty, third country central counterparty";

(b) at the appropriate place insert—

""EEA central counterparty" has the meaning set out in section 285 of FSMA;

"third country central counterparty" has the meaning set out in section 285 of FSMA;".

(3) In regulation 13(1)(a)(iii) after "facilitate the" insert "transfer,".

Amendments to the Stamp Duty and Stamp Duty Reserve Tax (Eurex Clearing AG) Regulations 2011

42.—(1) The Stamp Duty and Stamp Duty Reserve Tax (Eurex Clearing AG) Regulations 2011(**c**) are amended as follows.

(2) In regulation 2—

(a) at the appropriate place insert—

""clearing member client contract" has the same meaning as in section 155 of the Companies Act 1989;

"default rules" and "defaulting" have the same meaning as in section 188 of the Companies Act 1989;

(**a**) S.I. 2009/1828.
(**b**) S.I. 2011/245.
(**c**) S.I. 2011/666.

"EEA central counterparty" and "third country central counterparty" have the same meaning as in section 285 of the Financial Services and Markets Act 2000;";

(b) in the definition of "nominee" after "prescribed recognised clearing house," insert "prescribed EEA central counterparty or prescribed third country central counterparty".

(3) For regulation 3 substitute—

"Prescription of Eurex

3. Eurex is prescribed for the purposes of sections 116 and 117 of the Finance Act 1991.".

(4) In regulation 4

(a) in paragraph (1) after "prescribed by" insert "paragraph (1A) or";

(b) after paragraph (1) insert—

"(1A) The circumstances prescribed by this paragraph are where, in connection with a facility transaction or an over the counter transaction, the conditions in paragraphs (1B) and (1C) are met.

(1B) A clearing member client contract entered into by a defaulting clearing participant ("DCP") is transferred from the DCP to a non-defaulting clearing participant in accordance with the default rules of Eurex.

(1C) The clearing member client contract referred to in paragraph (1B) does not represent the end transaction in the clearing of that contract either before or after the transfer.";

(c) in paragraph (2) after "The circumstances prescribed" insert "by this paragraph";

(d) at the end of paragraph (3)(f) omit "or";

(e) after paragraph (3)(f) insert—

"(fa)a prescribed EEA central counterparty or its nominee to Eurex or its nominee;

(fb) a prescribed third country central counterparty or its nominee to Eurex or its nominee; or".

Amendments to the Stamp Duty and Stamp Duty Reserve Tax (European Central Counterparty Limited) Regulations 2011

43.—(1) The Stamp Duty and Stamp Duty Reserve Tax (European Central Counterparty Limited) Regulations 2011(**a**) are amended as follows.

(2) In regulation 2—

(a) at the appropriate place insert—

""clearing member client contract" has the same meaning as in section 155 of the Companies Act 1989;

"default rules" and "defaulting" have the same meaning as in section 188 of the Companies Act 1989;

"EEA central counterparty" and "third country central counterparty" have the same meaning as in section 285 of the Financial Services and Markets Act 2000;";

(b) in the definition of "nominee" after "prescribed recognised clearing house," insert "prescribed EEA central counterparty or prescribed third country central counterparty".

(3) For regulation 3 substitute—

"**Prescription of EuroCCP**

3. EuroCCP is prescribed for the purposes of sections 116 and 117 of the Finance Act 1991.".

(**a**) S.I. 2011/667.

(4) In regulation 4—

(a) in paragraph (1) after "prescribed by" insert "paragraph (1A) or";

(b) after paragraph (1) insert—

"(1A) The circumstances prescribed by this paragraph are where, in connection with a facility transaction or an over the counter transaction, the conditions in paragraphs (1B) and (1C) are met.

(1B) A clearing member client contract entered into by a defaulting clearing participant ("DCP") is transferred from the DCP to a non-defaulting clearing participant in accordance with the default rules of EuroCCP.

(1C) The clearing member client contract referred to in paragraph (1B) does not represent the end transaction in the clearing of that contract either before or after the transfer.";

(c) in paragraph (2) after "The circumstances prescribed" insert "by this paragraph";

(d) at the end of paragraph (3)(f) omit "or";

(e) after paragraph (3)(f) insert—

"(fa)a prescribed EEA central counterparty or its nominee to EuroCCP or its nominee;

(fb) a prescribed third country central counterparty or its nominee to EuroCCP or its nominee; or".

Amendments to the Stamp Duty and Stamp Duty Reserve Tax (European Multilateral Clearing Facility N.V.) Regulations 2011

44.—(1) The Stamp Duty and Stamp Duty (European Multilateral Clearing Facility N.V.) Regulations 2011(**a**) are amended as follows.

(2) In regulation 2—

(a) at the appropriate place insert—

""clearing member client contract" has the same meaning as in section 155 of the Companies Act 1989;

"default rules" and "defaulting" have the same meaning as in section 188 of the Companies Act 1989;

"EEA central counterparty" and "third country central counterparty" have the same meaning as in section 285 of the Financial Services and Markets Act 2000;";

(b) in the definition of "nominee" after "prescribed recognised clearing house," insert "prescribed EEA central counterparty or prescribed third country central counterparty".

(3) For regulation 3 substitute—

"Prescription of EMCF

3. EMCF is prescribed for the purposes of sections 116 and 117 of the Finance Act 1991.
".

(4) In regulation 4—

(a) in paragraph (1) after "prescribed by" insert "paragraph (1A) or".

(b) after paragraph (1) insert—

"(1A) The circumstances prescribed by this paragraph are where, in connection with a facility transaction or an over the counter transaction, the conditions in paragraphs (1B) and (1C) are met.

(**a**) S.I. 2011/668.

(1B) A clearing member client contract entered into by a defaulting clearing participant ("DCP") is transferred from the DCP to a non-defaulting clearing participant in accordance with the default rules of EMCF.

(1C) The clearing member client contract referred to in paragraph (1B) does not represent the end transaction in the clearing of that contract either before or after the transfer.";

(c) in paragraph (2) after "The circumstances prescribed" insert "by this paragraph";

(d) at the end of paragraph (3)(f) omit "or";

(e) after paragraph (3)(f) insert—

"(fa)a prescribed EEA central counterparty or its nominee to EMCF or its nominee;

(fb) a prescribed third country central counterparty or its nominee to EMCF or its nominee; or".

Amendments to the Stamp Duty and Stamp Duty Reserve Tax (LCH.Clearnet Limited) Regulations 2011

45.—(1) The Stamp Duty and Stamp Duty Reserve Tax (LCH.Clearnet Limited) Regulations 2011(**a**) are amended as follows.

(2) In regulation 2—

(a) at the appropriate place insert—

""clearing member client contract" has the same meaning as in section 155 of the Companies Act 1989;

"default rules" and "defaulting" have the same meaning as in section 188 of the Companies Act 1989;

"EEA central counterparty" and "third country central counterparty" have the same meaning as in section 285 of the Financial Services and Markets Act 2000;";

(b) in the definition of "nominee" after "prescribed recognised clearing house," insert "prescribed EEA central counterparty or prescribed third country central counterparty".

(3) For regulation 3 substitute—

"**Prescription of LCH.Clearnet**

3. LCH.Clearnet is prescribed for the purposes of sections 116 and 117 of the Finance Act 1991.".

(4) In regulation 4—

(a) in paragraph (1) after "prescribed by" insert "paragraph (1A) or".

(b) after paragraph (1) insert—

"(1A) The circumstances prescribed by this paragraph are where, in connection with a facility transaction or an over the counter transaction, the conditions in paragraphs (1B) and (1C) are met.

(1B) A clearing member client contract entered into by a defaulting clearing participant ("DCP") is transferred from the DCP to a non-defaulting clearing participant in accordance with the default rules of LCH.Clearnet.

(1C) The clearing member client contract referred to in paragraph (1B) does not represent the end transaction in the clearing of that contract either before or after the transfer.";

(c) in paragraph (2) after "The circumstances prescribed" insert "by this paragraph";

(d) at the end of paragraph (3)(f) omit "or";

(e) after paragraph (3)(f) insert—

(**a**) S.I. 2011/669.

"(fa)a prescribed EEA central counterparty or its nominee to LCH.Clearnet or its nominee;

(fb) a prescribed third country central counterparty or its nominee to LCH.Clearnet or its nominee; or".

Amendments to the Stamp Duty and Stamp Duty Reserve Tax (SIX X-CLEAR AG) Regulations 2011

46.—(1) The Stamp Duty and Stamp Duty Reserve Tax (SIX X-CLEAR AG) Regulations 2011(**a**) are amended as follows.

(2) In regulation 2—

(a) at the appropriate place insert—

""clearing member client contract" has the same meaning as in section 155 of the Companies Act 1989;

"default rules" and "defaulting" have the same meaning as in section 188 of the Companies Act 1989;

"EEA central counterparty" and "third country central counterparty" have the same meaning as in section 285 of the Financial Services and Markets Act 2000;";

(b) in the definition of "nominee" after "prescribed recognised clearing house," insert "prescribed EEA central counterparty or prescribed third country central counterparty".

(3) For regulation 3 substitute—

"**Prescription of X-CLEAR**

3. X-CLEAR is prescribed for the purposes of sections 116 and 117 of the Finance Act 1991.".

(4) In regulation 4—

(a) in paragraph (1) after "prescribed by" insert "paragraph (1A) or".

(b) after paragraph (1) insert—

"(1A) The circumstances prescribed by this paragraph are where, in connection with a facility transaction or an over the counter transaction, the conditions in paragraphs (1B) and (1C) are met.

(1B) A clearing member client contract entered into by a defaulting clearing participant ("DCP") is transferred from the DCP to a non-defaulting clearing participant in accordance with the default rules of X-CLEAR.

(1C) The clearing member client contract referred to in paragraph (1B) does not represent the end transaction in the clearing of that contract either before or after the transfer.";

(c) in paragraph (2) after "The circumstances prescribed" insert "by this paragraph";

(d) at the end of paragraph (3)(f) omit "or";

(e) after paragraph (3)(f) insert—

"(fa)a prescribed EEA central counterparty or its nominee to X-CLEAR or its nominee;

(fb) a prescribed third country central counterparty or its nominee to X-CLEAR or its nominee; or".

(**a**) S.I. 2011/670.

Amendments to the Stamp Duty and Stamp Duty Reserve Tax (Cassa Di Compensazione E Garanzia S.p.A.) Regulations 2011

47.—(1) The Stamp Duty and Stamp Duty Reserve Tax (Cassa Di Compensazione E Garanzia S.p.A.) Regulations 2011(**a**) are amended as follows.

(2) In regulation 2—

(a) at the appropriate place insert—

""clearing member client contract" has the same meaning as in section 155 of the Companies Act 1989;

"default rules" and "defaulting" have the same meaning as in section 188 of the Companies Act 1989;

"EEA central counterparty" and "third country central counterparty" have the same meaning as in section 285 of the Financial Services and Markets Act 2000;";

(b) in the definition of "nominee" after "prescribed recognised clearing house," insert "prescribed EEA central counterparty or prescribed third country central counterparty".

(3) For regulation 3 substitute—

"Prescription of CC&G

3. CC&G is prescribed for the purposes of sections 116 and 117 of the Finance Act 1991.
".

(4) In regulation 4—

(a) in paragraph (1) after "prescribed by" insert "paragraph (1A) or".

(b) after paragraph (1) insert—

"(1A) The circumstances prescribed by this paragraph are where, in connection with a facility transaction or an over the counter transaction, the conditions in paragraphs (1B) and (1C) are met.

(1B) A clearing member client contract entered into by a defaulting clearing participant ("DCP") is transferred from the DCP to a non-defaulting clearing participant in accordance with the default rules of CC&G.

(1C) The clearing member client contract referred to in paragraph (1B) does not represent the end transaction in the clearing of that contract either before or after the transfer.";

(c) in paragraph (2) after "The circumstances prescribed" insert "by this paragraph";

(d) at the end of paragraph (3)(f) omit "or";

(e) after paragraph (3)(f) insert—

"(fa)a prescribed EEA central counterparty or its nominee to CC&G or its nominee;

(fb) a prescribed third country central counterparty or its nominee to CC&G or its nominee; or".

Amendments to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013

48.—(1) The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013(**b**) is amended as follows.

(2) In article 2—

(a) omit the definition of "UK recognised clearing house";

(b) insert at the appropriate place—

(**a**) S.I. 2011/2205.
(**b**) S.S.I. 2013/50.

""recognised clearing house" means a recognised clearing house as defined in section 285 of the 2000 Act;".

(3) In Schedule 2—

(a) in paragraph 1(j)—

(i) for "UK recognised clearing house" substitute "recognised clearing house";

(ii) after "section 292(2) of that Act," insert "to refuse to vary a recognition order under section 290ZA(1) of the 2000 Act, to vary a recognition order under section 290ZA(2) of the 2000 Act,";

(b) in paragraph 7 for "UK recognised clearing house" substitute "recognised clearing house";

(c) in the Table—

(i) for entry 6 substitute—

"6.	An associate of a UK recognised investment exchange or recognised clearing house.	The FCA, the PRA or the Bank of England or the investment exchange or clearing house mentioned in the first column.";

(ii) for paragraph (1) of entry 16 substitute—

"16.	(1)	Any member of a UK recognised investment exchange or recognised clearing house.	(1) The UK recognised investment exchange or recognised clearing house specified in the first column.".

Amendment to the Payment to Treasury of Penalties (Enforcement Costs) Order 2013

49.—(1) The Payment to Treasury of Penalties (Enforcement Costs) Order 2013(**a**) is amended as follows.

(2) In article 2 after paragraph (j) insert—

"(k) regulation 9 of the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013.".

PART 9

Transitional and saving provisions

Interpretation of Part 10

50. In this Part—

"CCP RCH" means a person, wherever established, which immediately before 15th March 2013 was a recognised clearing house or recognised investment exchange providing clearing services as a central counterparty in the United Kingdom;

"commencement" means the coming into force of these Regulations;

"FSA" means the Financial Services Authority.

Information provided to or requested by FSA

51. On and after commencement—

(a) information requested by the FSA under—

(i) Article 31 of the EMIR regulation, or

(**a**) S.I. 2013/418.

(ii) Article 17, 83 or 84 of that Regulation from or in relation to a central counterparty,

is to be treated as if it had been requested by the Bank; and

(b) information provided to the FSA in accordance with—

(i) Article 31 of the EMIR regulation, or

(ii) Article 17, 83 or 84 of that Regulation from or in relation to a central counterparty,

is to be treated as if it had been provided to the Bank.

Transitional and saving provisions: central counterparties

52.—(1) The transition period for a CCP RCH begins with commencement.

(2) The transition period for a CCP RCH established in the United Kingdom ends immediately after—

(a) the Bank determines its application under section 288(1) of the Act in accordance with Article 17 of the EMIR regulation, or

(b) the end of the six month period specified in the first sub-paragraph of Article 89(3) of the EMIR regulation, if the CCP RCH has not made an application under section 288(1) of the Act before the end of that period.

(3) The transition period for a CCP RCH established in an EEA State other than the United Kingdom ends immediately after—

(a) the competent authority of that State determines its application in accordance with Article 17 of the EMIR regulation, or

(b) the end of the six month period specified in the first sub-paragraph of Article 89(3) of the EMIR regulation, if the CCP RCH has not made an application under Article 14 before the end of that period.

(4) The transition period for a CCP RCH established in a State which is not an EEA State ends immediately after—

(a) ESMA determines its application in accordance with Article 25 of the EMIR regulation, or

(b) the end of the six month period specified in the second sub-paragraph of Article 89(3) of the EMIR regulation, if the CCP RCH has not made an application under Article 25 before the end of that period.

(5) During its transition period, the following legislation applies in relation to a CCP RCH as if it had not been amended or disapplied by these Regulations—

(a) section 285(3) of the Act(**a**) (exemption from general prohibition for recognised clearing house);

(b) section 297 of the Act(**b**) (revoking recognition);

(c) sections 300A to 300E of the Act(**c**) (power to disallow excessive regulatory provision);

(d) the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(**d**).

(6) But paragraph (5)(d) does not apply in relation to the assessment and determination of any application by the CCP RCH under Article 14 of the EMIR regulation.

(7) Section 296A of the Act(**e**) (additional power to direct recognised central counterparties) applies during the transition period for a CCP RCH as if a reference to a "recognised central counterparty" were a reference to a "CCP RCH".

(**a**) Section 285(3) was amended by section 28 of the Financial Services Act 2012.
(**b**) Section 297 was amended by S.I. 2007/126 and 2012/916 and Schedule 8 to the Financial Services Act 2012.
(**c**) Sections 300A to 300E were inserted by section 2 of the Investment Exchanges and Clearing Houses Act 2006 (c.55).
(**d**) S.I. 2001/995.
(**e**) Section 296A was inserted by section 31 of the Financial Services Act 2012.

(8) Nothing in these Regulations affects the validity of a CCP RCH's recognition order during its transition period.

Further transitional provisions: EEA and third country central counterparties

53.—(1) Where the competent authority of an EEA State other than the United Kingdom has made a decision to authorise or not to authorise a CCP RCH in accordance with Article 17 of the EMIR regulation—

(a) its recognition order under section 292(2)(b) of the Act ceases to be valid; and

(b) the CCP RCH is no longer a recognised clearing house.

(2) Where ESMA has made a decision to recognise or not to recognise a CCP RCH established in a State which is not an EEA State in accordance with Article 25 of the EMIR regulation—

(a) its recognition order under section 292(2)(b) of the Act ceases to be valid; and

(b) the CCP RCH is no longer a recognised clearing house.

Transitional and saving provisions: overseas persons

54.—(1)The transition period for an overseas person begins with commencement.

(2) The transition period for an overseas person ends immediately after—

(a) the determination of its application in accordance with Article 17 or 25 of the EMIR regulation, or

(b) the end of the six month period specified in the second sub-paragraph of Article 89(3) of the EMIR regulation, if the overseas person has not made an application under Article 17 or 25 of the EMIR regulation before the end of that period.

(3) During the transition period for an overseas person, article 72 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 applies in relation to that overseas person as if it had not been amended by these Regulations.

(4) In this regulation, "overseas person" means an overseas person (within the meaning of article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**a**)) which provided clearing services as a central counterparty immediately before commencement.

Transitional and saving provisions: designation orders under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999

55. Nothing in these Regulations affects any designation order in force under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(**b**) in relation to a designated system, and no system operator shall be required to apply for an amended designation order in consequence only of these Regulations.

(**a**) S.I. 2001/544; the definition of "overseas person" in article 3(1) was amended by S.I. 2003/1475, 2006/2383 and 3384 and 2009/1342.

(**b**) S.I.1999/2979.

PART 10

Miscellaneous

Warning notices and decision notices

56. Sections 387 (warning notices), 388 (decision notices), 389 (notices of discontinuance), 391 (publication), 393 (third party rights) and 394 (access to Authority material) of the Act(**a**) apply in relation to a warning notice or decision notice under these Regulations.

Offences

57. Sections 400 (offences by bodies corporate etc.), 401 (proceedings for offences) and 403 (jurisdiction and procedure in respect of offences) of the Act(**b**) apply to offences under these Regulations as they apply to offences under the Act.

References to the Tribunal

58. Part 9 of the Act (hearings and appeals) applies to references to the Tribunal under these Regulations as it applies to references to the Tribunal under the Act.

Scotland

59. In the application of these Regulations to Scotland, references to the High Court are to be read as references to the Court of Session.

Review

60.—(1) The Treasury must from time to time—

(a) carry out a review of regulations 3 to 59,

(b) set out the conclusions of the review in a report, and

(c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the EMIR regulation (which is implemented in part by means of regulations 3 to 59) is implemented in other Member States.

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by regulations 3 to 59;

(b) assess the extent to which those objectives are achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before 1st April 2018.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

(**a**) Sections 387, 388, 389, 391, 393 and 394 were amended by Schedule 9 to the Financial Services Act 2012. Section 391 was also amended by section 13 of the Financial Services Act 2010, section 24 of the Financial Services Act 2012 and S.I. 2012/916. Section 394 was also amended by Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23).

(**b**) Sections 400, 401 and 403 were amended by Schedule 9 to the Financial Services Act 2012. Section 401 was also amended by Schedule 25 to the Enterprise Act 2002 (c.40).

Stephen Crabb
Robert Goodwill
Two of the Lords Commissioners of Her Majesty's Treasury

6th March 2013

Vince Cable
Secretary of State for Business, Innovation and Skills

6th March 2013

SCHEDULE

Regulation 4(19)

Section 191 of the Companies Act 1989: index of defined expressions

Defined Expression	Section
administration	Sections 190(6A) and (6B)
administrator	Sections 190(6A) and (6B)
administrative receiver	Section 190(1)
charge	Section 190(1)
clearing member	Section 190(1)
clearing member client contract	Section 155(1)(a)
clearing member house contract	Section 155(1)(b)
client	Section 190(1)
client trade	Section 155(1)(c)
cover for margin	Section 190(3)
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EMIR Level 1 Regulation	Section 190(1)
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recognised investment exchange	Section 190(1)
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sequestration	Section 190(7)(a)
set off (in relation to Scotland)	Section 190(1)
settlement and related expressions (in relation to a market contract)	Section 190 (2)
The Stock Exchange	Section 190(1)
trustee, interim or permanent (in relation to Scotland)	Section 190(7)(b)
UK (in relation to investment exchanges)	Section 190(1)
winding up	Sections 190(6A) and (6B)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement certain Articles of Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ No L 201, 27.7.2012, p1) ("the EMIR regulation").

Part 2 amends Part 18 of the Financial Services and Markets Act 2000 (c.8) (recognised investment exchanges and clearing houses), in order to make the provisions concerning clearing houses compatible with the EMIR regulation. The Regulations create a new category of clearing house, known as a "recognised central counterparty", which are those central counterparties which are subject to, and recognised pursuant to the provisions of, the EMIR regulation. Some provisions of Part 18 of the Financial Services and Markets Act 2000 will no longer apply to these bodies and in many cases the requirements are replaced by requirements emanating from the EMIR regulation.

Part 3 amends the Companies Act 1989 to implement and facilitate the provisions on segregation and portability of accounts in Articles 39 and 48 of the EMIR regulation.

Part 4 amends the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (S.I. 2001/995). The requirements relating to clearing houses in Part 3 of the Schedule are disapplied in relation to recognised central counterparties, and new Parts 5 and 6 are created which provide that the requirements of the EMIR regulation must be met in order for a body to gain recognition as a recognised central counterparty, together with the additional requirements set out in those Parts.

In Part 5, regulation 6 designates the Bank of England as the competent authority under the EMIR regulation for central counterparties. In most cases the Financial Conduct Authority ("FCA") is designated as competent authority under the EMIR regulation for financial and non-financial counterparties, trading venues, trade repositories and clearing members of central counterparties, but the Prudential Regulation Authority has certain competent authority functions in relation to persons authorised by it. Regulation 7 grants powers to the FCA to obtain information, and regulation 9 gives the FCA power to impose penalties for contravening the EMIR regulation and certain provisions of the Regulations in order to implement Articles 12 and 22(3) of the EMIR regulation. Part 5 also makes provision with regard to applications and notifications to the FCA under the EMIR regulation.

Part 6 gives the Bank of England enforcement powers in relation to the requirements in Article 31 of the EMIR regulation (acquisition of control over central counterparties).

Part 7 makes provision to enable the European Securities and Markets Authority to gain access to telephone and data traffic records and make on-site inspections so that it may carry out its obligations under Title 6 of the EMIR regulation (registration and supervision of trade repositories). In each case the Authority must first obtain authorisation from the High Court, or in Scotland the Court of Session.

Part 8 contains consequential amendments to primary and secondary legislation, and Part 9 makes transitional and saving provisions. Part 10 provides for these Regulations to be reviewed before 1st April 2018 and subsequently at intervals of not more than five years.

A Tax Information and Impact Note has not been prepared for this Instrument as it contains no substantive changes to tax policy.

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