Draft Regulations laid before Parliament under section 235(2) and (5) of the Banking Act 2009, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2016 No. 000

FINANCIAL SERVICES AND MARKETS

The Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2016

Made - - - - 00 July 2016

Coming into force in accordance with regulation 1

The Treasury make the following Regulations in exercise of the powers conferred by sections 232(6)(a) and (d), 233, 234 and 259(1) of the Banking Act 2009(**a**) (the power in section 233 not having lapsed under section 235(4)).

Before laying these Regulations before Parliament in draft the Treasury consulted in accordance with section 235(3) of that Act.

A draft of these Regulations has been laid before and approved by resolution of each House of Parliament in accordance with section 235(2) and (5) of that Act.

PART 1

Introductory provision

Citation and commencement

1. These Regulations may be cited as the Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2016, and come into force on the day after the day on which they are made.

PART 2

Definition of "investment bank"

Amendment of definition

2.—(1) An institution of a class specified in paragraph (2) is to be treated as an investment bank for the purpose of sections 232 to 236 of the Banking Act 2009.

(**a**) 2009 c. 1.

(2) This paragraph specifies the following classes of institution—

(a) an institution which has permission under Part 4A of the Financial Services and Markets Act 2000(**a**) to carry on the activity specified by article 51ZA of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**b**) (managing a UCITS) or article 51ZC of that Order (managing an AIF); and

(b) an institution which has permission under Part 4A of that Act to carry on the regulated activity specified by article 51ZB of that Order (acting as trustee or depositary of a UCITS) or article 51ZD of that Order (acting as trustee or depositary of an AIF).

Amendment of the Banking Act 2009 in consequence of regulation 2

3. In section 232 of the Banking Act 2009 (definition of "investment bank")—

(a) in subsection (2) after paragraph (a) insert—

ì(aa)managing an AIF or a UCITS,

(ab) acting as trustee or depositary of an AIF or a UCITS,î; and

(b) after subsection (2) insert—

ì(2A) Subsection (2) must be read with section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under section 22(**c**).î.

PART 3

Investment bank insolvency regulations

Amendment of the Investment Bank Special Administration Regulations 2011

4. The Investment Bank Special Administration Regulations 2011(**d**) are amended as follows.

Interpretation of additional expressions

5. In regulation 2(1) (interpretation)—

(a) after the definition of "client" insert—

ì"client bank account" means a bank account, other than a client transaction account, which the investment bank maintains in accordance with client money rules;

"client money" means client assets which are money received or held by an investment bank for, or on behalf, of clients;

"client money pool" means the pool of client money which is held on trust by the investment bank in accordance with client money rules and has been pooled in accordance with those rules for the purpose of distribution by the administrator;

"client money rules" means rules made under section 137B of FSMA(**e**) (FCA general rules: clients' money, right to rescind etc.) which make provision which results in client money being held on trust in accordance with the rules;

"client transaction account" means an account with any person which the investment bank maintains in accordance with client money rules for the purpose of—

(**a**) 2000 c. 8. Part 4A was substituted by the Financial Services Act 2012 (c. 21), section 11(2).
(**b**) S.I. 2001/516, as amended by S.I. 2013/1773. There are other amendments, but they are not relevant to these Regulations.
(**c**) See the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/516), as amended by S.I. 2013/1773 (for the activity of managing an AIF or a UCITS see articles 51ZA and 51ZC, and for the activity of acting as trustee or depositary of an AIF or a UCITS see articles 51ZB and 51ZD).
(**d**) S.I. 2011/245, as amended by S.I. 2013/472 and 2016/ [ ]. There are other amendments, but they are not relevant to these Regulations.
(**e**) Section 137B, together with the rest of Part 9A of FSMA, was substituted by the Financial Services Act 2012, section 24(1).

(a) any transaction with or by that person for a client's benefit; or

(b) meeting a client's obligation to provide collateral for a transaction;î; and

(b) after paragraph (2) insert—

ì(2A) In these Regulations a reference to the investment bank's own bank accounts includes a reference to any account opened by the administrator for the purposes of the special administration.î.

Overview

6. In regulation 3 (overview), in paragraph (3) re-number sub-paragraphs (c) and (d) so that they become paragraphs (i) and (ii) of sub-paragraph (b).

Special administration objectives—duties of co-operation for the achievement of Objective 1

7. After regulation 10 (special administration objectives) insert—

ì**Objective 1—duty of administrator to work with the FSCS**

10A.—(1) The administrator must work with the FSCS to—

(a) ensure that client assets are returned as soon as reasonably practicable; and

(b) enable the FSCS to administer the compensation scheme in relation to the entitlement of clients of the investment bank to compensation.

(2) In paragraph (1), "work with" means—

(a) as soon as reasonably practicable after appointment as the administrator, to inform the FSCS of the value of client assets held by the investment bank for each of the clients of the bank;

(b) to keep the FSCS informed about progress towards the achievement of Objective 1;

(c) to comply, as soon as reasonably practicable, with any request by the FSCS for the provision of information or the production of documents (in hard copy or in electronic format) relating to the client assets held by the investment bank; and

(d) at the request of the FSCS, to provide any assistance identified by the FSCS as being necessary for the purpose of paragraph (1)(b).

(3) This regulation does not apply if the administrator is appointed under a special administration (bank insolvency) order (within the meaning given by paragraph 2 of Schedule 1).

Objective 1—duty of banks, custodians and counterparties to work with administrator

10B.—(1) Any person with whom the investment bank maintains a client bank account or client transaction account must work with the administrator to facilitate—

(a) the performance of the functions of the administrator conferred by regulation 10F(**a**); and

(b) the achievement of Objective 1 by the withdrawal of money from the account.

(2) In paragraph (1), "work with" means to—

(a) comply, as soon as reasonably practicable, with any request by the administrator for the provision of information or the production of documents (in hard copy or in

(**a**) Regulation 10F is inserted by regulation 9 of these Regulations.

electronic format) relating to the account and any records showing the amount of client money which the investment bank holds for each client;

(b) produce all information and documents required for the purpose of carrying out the reconciliation referred to in regulation 10F(1);

(c) assist the administrator to carry out that reconciliation; and

(d) make all necessary investigations of matters relating to the account or records held in connection with the account.

(3) Any person with whom the investment bank or another institution in the name of the investment bank maintains an account for holding client assets other than client money ("non-money assets") must work with the administrator to facilitate—

(a) the identification of the assets held in the account;

(b) the identification of the clients who have beneficial ownership, or other form of ownership, of the assets, or of any persons in relation to a security interest asserted over, or other entitlement to, the assets; and

(c) the achievement of Objective 1 by the withdrawal of assets from the account.

(4) In paragraph (3), "work with" means to—

(a) comply, as soon as reasonably practicable, with any request by the administrator for the provision of information or the production of documents (in hard copy or in electronic format) relating to records and accounts showing the non-money assets which the investment bank holds for each client;

(b) produce all information and documents required for the purpose of carrying out a reconciliation of records and accounts showing the amount of non-money assets which the investment bank holds for each client with records and accounts showing the amount of non-money assets which the investment bank holds for each client in accounts maintained for holding such assets;

(c) assist the administrator to carry out that reconciliation; and

(d) make all necessary investigations of matters relating to the account or records held in connection with the account.

(5) Where a person—

(a) has entered into a market contract with the investment bank,

(b) has made a transaction with the investment bank under such a contract,

(c) is the chargee under a market charge granted by the investment bank, or

(c) is the chargor under a market charge granted in favour of the investment bank,

that person ("the counterparty") must work with the administrator to facilitate the achievement of Objective 1 by means of sharing information about the contract, transaction or charge (as the case may be).

(6) In paragraph (5), "work with" means to—

(a) comply, as soon as reasonably practicable, with any request by the administrator for the provision of information or the production of documents (in hard copy or in electronic format) relating to the contract, transaction or charge concerned; and

(b) make all necessary investigations of matters relating to that contract, transaction or charge.

(7) But the counterparty is under no duty to work with the administrator where the administrator is satisfied on evidence adduced by the counterparty that the cost of doing so would be disproportionate to the benefit that would be derived for the special administration.î.

Transfer of client assets

8. After regulation 10B(**a**) insert—

ì**Objective 1—transfer of client assets**

10C.—(1) This regulation applies where—

(a) the administrator, in pursuit of Objective 1 (whether or not also in pursuit of Objective 3) enters into a binding arrangement with another financial institution for the transfer to that institution ("the transferee") of all or some of the property, rights and liabilities of the investment bank; and

(b) for the purposes of that transfer the arrangement includes provision for a transfer of client assets to the transferee or to a person who has undertaken to receive or hold any of the assets to the order of the transferee.

(2) This regulation is subject to the restrictions on partial property transfers in regulations 10D and 10E.

(3) The transfer of client assets and of relevant rights and liabilities under a client contract is to have effect in spite of any—

(a) restriction affecting what can or cannot be assigned or transferred by the investment bank;

(b) requirement to obtain the consent (however referred to) of any person who is party to the client contract; or

(c) entitlement of any person to the return of the assets otherwise than by transfer under the arrangement.

(4) For these purposes it does not matter whether a restriction, requirement or entitlement has effect by virtue of a provision contained in a contract or an enactment, or in any other way.

(5) So far as necessary for the purposes of the arrangement each client contract is to be treated as if it had been made by the transferee rather than the investment bank.

(6) Paragraph (5) does not apply in relation to anything done by the investment bank in consequence of which the bank is or may be guilty of any offence or subject to any penalty.

(7) Where necessary for the purposes of the arrangement the administrator may disclose to the transferee all information which is, in the administrator's view, relevant to the transfer of client assets or client contracts.

(8) Paragraph (7) overrides any contractual or other requirement to keep information in confidence.

(9) Paragraphs (7) and (8) do not authorise a disclosure, in contravention of any provisions of the Data Protection Act 1998(**b**), of any personal data which are not exempt from those provisions.

(10) The arrangement must include such provision as the administrator thinks necessary to ensure that clients whose assets are to be transferred will be able to exercise their rights in relation to the assets as soon as reasonably practicable after the transfer.

(11) Where the arrangement purports to transfer all of the property, rights and liabilities of the investment bank, it is to be treated as having done so effectively (so that regulations 10D and 10E do not apply to it) notwithstanding the possibility that any property, right or liability purportedly transferred is foreign property and might not have been effectively transferred by the arrangement.

(12) In this regulation—

(**a**) Regulation 10B is inserted by regulation 7 of these Regulations.
(**b**) 1998 c. 29.

"client assets" includes assets equivalent to those which the investment bank undertook to hold for clients;

"client contract" means a contract under which the investment bank undertook to—

(a) receive or hold client assets; or

(b) provide any services or enter into any transactions for the benefit of a particular client in relation to the bank's holding of client assets for that client; and

"relevant rights and liabilities", in relation to a client contract, means the rights and liabilities under the contract so far as they have effect in relation to the client assets which are to be transferred under the arrangement.

Restrictions on partial property transfers—set-off and netting

10D.—(1) This regulation applies where the administrator enters into an arrangement of a kind referred to in regulation 10C(1) for the transfer of some, but not all, of the property, rights and liabilities of the investment bank (a "partial property transfer").

(2) A partial property transfer may not provide for the transfer of some, but not all, of the protected rights and liabilities between a client or other person ("P") and the investment bank under a set-off arrangement, netting arrangement or title transfer financial collateral arrangement.

(3) For the purposes of paragraph (2) rights and liabilities between P and the investment bank are protected if—

(a) they are rights and liabilities which P or the bank is entitled to set off or net under the set-off arrangement, netting arrangement or title transfer financial collateral arrangement which P has entered into with the bank; and

(b) they are not excluded rights or excluded liabilities.

(4) A partial property transfer which purports to transfer all of the protected rights and liabilities between P and the investment bank under a set-off arrangement, netting arrangement or title transfer financial collateral arrangement is to be treated as having done so effectively (and not in contravention of paragraph (2)) notwithstanding the possibility that any of the protected rights or liabilities are foreign property and might not have been effectively transferred by the arrangement.

(5) For the purposes of paragraph (3), it is immaterial whether or not—

(a) the arrangement which permits P or the investment bank to set off or net rights and liabilities also permits P or the bank to set-off or net rights and liabilities with another person; or

(b) the right of P or the bank to set off or net is exercisable only on the occurrence of a particular event.

(6) A partial property transfer may not transfer property, rights or liabilities to the extent that doing so would contravene EU law.

(7) A partial property transfer made in contravention of this regulation does not affect the exercise of the right to set off or net.

(8) In this regulation—

"excluded rights", in relation to rights between P and the investment bank, has the same meaning as it has in relation to rights between P and a banking institution by virtue of articles 1(3) and 3 of the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009(**a**), except that in article 1(3), in the definition of "excluded rights"—

(a) in paragraph (e) the reference to subordinated debt is to be read as a reference to subordinated debt issued by P or by the investment bank; and

(**a**) S.I. 2009/322, as amended by S.I. 2009/1826; 2013/472 and 2013/3155. There are other amendments, but they are not relevant to these Regulations.

(b) in paragraph (f)—

(i) the reference to a set-off arrangement, netting arrangement or title transfer financial collateral arrangement is to be read as a reference to a set-off arrangement, netting arrangement or title transfer financial collateral arrangement referred to in this regulation; and

(ii) the references to transferable securities are to be read as references to transferable securities issued by P or by the investment bank;

"excluded liabilities" means the liabilities which correspond with excluded rights;

"netting arrangement" means an arrangement under which a number of claims or obligations can be converted into a net claim or obligation and includes, in particular—

(a) a "close-out" netting arrangement, under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set off against each other or to be converted into a net debt;

(b) an arrangement which provides for netting (within the meaning given by regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(**a**)); and

(c) an arrangement which includes a close-out netting provision (within the meaning given by regulation 3(1) of the Financial Collateral Arrangements (No 2) Regulations 2003(**b**));

"set-off arrangement" means an arrangement under which two or more debts, claims or obligations can be set off against each other; and

"title transfer financial collateral arrangement" has the meaning given by regulation 3(1) of the Financial Collateral Arrangements (No 2) Regulations 2003.

Restrictions on partial property transfers—security interests

10E.—(1) This regulation applies where the administrator enters into an arrangement of a kind referred to in regulation 10C(1) for the transfer of some, but not all, of the property, rights and liabilities of the investment bank (a "partial property transfer").

(2) Subject to paragraph (7), paragraphs (4), (5) and (6) apply where under any binding arrangement one party owes to the other a liability which is secured against any property or rights.

(3) For these purposes it is immaterial whether or not—

(a) the liability is secured against all or substantially all of the property or rights of a person;

(b) the liability is secured against specified property or rights; or

(c) the property or rights against which the liability is secured are not owned by the person who owes the liability.

(4) A partial property transfer may not transfer the property or rights against which the liability is secured unless that liability and the benefit of the security are also transferred.

(5) A partial property transfer may not transfer the benefit of the security unless the liability which is secured is also transferred.

(6) A partial property transfer may not transfer the liability unless the benefit of the security is also transferred.

(7) Paragraphs (4), (5) and (6) do not apply if the investment bank has entered into the arrangement in contravention of a rule prohibiting such arrangements made by a regulator

(**a**) S.I. 1999/2979. There are amendments, but they are not relevant to these Regulations.
(**b**) S.I. 2003/3226. Regulation 3 was re-numbered regulation 3(1) by S.I. 2010/2993. There are other amendments, but they are not relevant to these Regulations.

under FSMA or otherwise than in accordance the bank's Part 4A permission (within the meaning given by section 55A(5) of FSMA(**a**)).

(8) A partial property transfer which purports to transfer any property, rights and liabilities is to be treated as having done so effectively (and not in contravention of paragraph (4), (5) or (6)) notwithstanding the possibility that any property, right or liability purportedly transferred is foreign property and might not have been effectively transferred by the arrangement.î.

Distribution of client money

9. After regulation 10E(**b**) insert—

ì**Objective 1—final reconciliation of accounts and records relating to client money**

10F.—(1) The administrator must carry out a final client money reconciliation.

(2) That reconciliation must—

(a) be carried out in accordance with the method for carrying out client money reconciliations adopted by the investment bank in compliance with client money rules;

(b) be based on records and accounts as they stood immediately after the last such reconciliation by the investment bank;

(c) take account of money received, and payments and transfers made, by the investment bank after the date of that reconciliation;

(d) take no account of money received, or payments or transfers made, by the investment bank before that date; and

(e) take account of any amount transferred from the investment bank's own bank accounts to its client bank accounts in accordance with client money rules for the prudent segregation of additional amounts as client money.

(3) Where the aggregate balance of the investment bank's client bank accounts is less than the total amount of client money which the investment bank is required by client money rules to have segregated in its client bank accounts, the administrator must transfer an amount equal to the difference from the investment bank's own bank accounts to the client bank accounts.

(4) Where the aggregate balance of the investment bank's client bank accounts exceeds the total amount of client money which the investment bank is required by client money rules to have segregated in its client bank accounts, the administrator must transfer an amount equal to the difference from the client bank accounts to the investment bank's own bank accounts.

(5) In this regulation "client money reconciliation" means a reconciliation of—

(a) records and accounts showing the amount of client money which the investment bank holds for each client, with

(b) records and accounts showing the amount of client money which the investment bank holds for each client in client bank accounts and client transaction accounts.

Objective 1—removal of right to interest on unsecured claims for the return of client money

10G.—(1) This regulation applies where—

(a) a debt arises from a liability of the investment bank to return client money;

(**a**) Section 55A was substituted (together with the rest of Part 4A of FSMA) by the Financial Services Act 2012, section 11(2).
(**b**) Regulation 10E is inserted by regulation 8 of these Regulations.

(b) the client has not submitted a claim for payment of the debt by way of a distribution from the client money pool; and

(c) the client makes an unsecured claim for payment of the debt.

(2) The client is not entitled to interest on the debt for the period commencing on the date on which the investment bank entered special administration, except interest on such part of the debt which remains after deduction of the total amount which the client would have received on a claim for payment of the debt by way of a distribution from the client money pool.î.

Distribution of client assets

10. In regulation 11 (Objective 1—distribution of client assets)—

(a) for paragraph (4) substitute—

ì(4) Subject to paragraph (4A), where the administrator sets a bar date—

(a) the administrator must return client assets in accordance with the prescribed procedure; but

(b) no client assets may be returned after the bar date has been set unless the court has given its approval on an application made by the administrator in accordance with the prescribed procedure.

(4A) The administrator may, at any time after setting a bar date, return client assets without the approval of the court if (and only if)—

(a) at that time the administrator has not made any application for court approval to return client assets;

(b) the administrator has identified the person who is beneficially entitled to the assets or has a right to the assets as bailor or otherwise; and

(c) the assets are not held by the investment bank in a client omnibus account (within the meaning given in regulation 12(9)).î;

(b) in paragraph (5) after "has returned client assets" insert "with the approval of the court"; and

(c) in paragraph (8) for the words from "client assets" to the end substitute "client money".

Shortfall in client assets held in omnibus account

11. In regulation 12 (Objective 1—shortfall in client assets held in omnibus account), in paragraph (1)(c) for the words from "ones" to the end substitute "client money".

Objective 1—distribution of client money

12. After regulation 12 insert—

ì**Objective 1—distribution of client money**

12A.—(1) The administrator may set a bar date where—

(a) all client money received or held by the investment bank has been pooled in accordance with client money rules for the purpose of distribution by the administrator; and

(b) the administrator thinks that it is necessary to set a bar date in order to expedite the return of client money.

(2) In setting a bar date the administrator must allow a reasonable time after notice of the special administration has been published (in accordance with insolvency rules) for persons to be able to calculate and submit client money claims.

(3) As soon as reasonably practicable after the bar date, the administrator must make a distribution of client money to the clients or other persons who are or appear to be entitled to payment under client money claims.

(4) Client money claims submitted after the bar date, but before the return of client money after that date, must, so far as is reasonably practicable, be included within the distribution of client money under paragraph (3).

(5) Where the administrator has returned client money after the bar date, there must be no disruption to the distribution of client money under paragraph (3) for the purpose of meeting a late claim.

(6) The restriction in paragraph (5) does not apply where—

(a) client money was returned to a person by the administrator in bad faith in which that person was complicit; or

(b) a person to whom client money was returned is later found to have made a false claim to the money.

(7) Paragraph (8) applies where the administrator determines that a client or other person who makes a late claim would have participated in the distribution of client money under paragraph (3) if the claim had been submitted before the return of client money after the bar date.

(8) If any money is still available for distribution from the client money pool, the administrator must make a distribution of client money to the claimant as soon as reasonably practicable.

(9) In this regulation—

"bar date" means a date by which clients are invited to submit client money claims for the purposes of this regulation;

"client money claims" are claims for the return of client money, including claims that are disputed; and

"late claim" means a client money claim received after the bar date, including such a claim which is received before the return of client money after that date but is not included within the distribution of client money under paragraph (3).

Objectives 1 and 3—client assets (other than client money) which the administrator is unable to return to clients

12B.—(1) This regulation applies where the administrator, after setting a soft bar date, includes in a distribution plan provision for the option of setting a hard bar date.

(2) If the administrator thinks it necessary in order to expedite the return of client assets, the administrator may by a hard bar date notice set a final date for the submission of client asset claims.

(3) The administrator may not set a hard bar date without the approval of the court given on application by the administrator.

(4) Where the administrator sets a hard bar date, the administrator, after that date—

(a) must return client assets to eligible claimants;

(b) may dispose of all client assets which the investment bank still holds after the return of client assets to any eligible claimants ("residual assets"); and

(c) must transfer the proceeds of any disposal of residual assets to the investment bank's own bank accounts.

(5) A person who acquires client assets on a disposal of residual assets acquires good title to them as against all clients.

(6) Where the administrator receives a client asset claim after the hard bar date ("late claim") and—

(a) the administrator has not made any arrangements for the disposal of the residual assets, or

(b) such arrangements as the administrator has made for their disposal do not prevent the administrator from returning them,

the administrator must meet the late claim out of the residual assets.

(7) Where the administrator has returned client assets after setting a hard bar date and then receives a late claim in respect of assets that have been returned—

(a) there must be no disruption to those client assets that have already been returned; and

(b) the person to whom the assets have been returned acquires good title to them as against the late-claiming claimant.

(8) The restrictions in paragraph (7) do not apply where—

(a) the client assets were returned to a person by the administrator in bad faith in which that person was complicit; or

(b) a person to whom client assets were returned is later found to have made a false claim to them.

(9) Where a disposal of residual assets prevents the administrator from meeting a late claim—

(a) that person's claim against the investment bank ranks as an unsecured claim; and

(b) the value of the unsecured claim is the value of the consideration paid to the administrator for the assets disposed of which would have been returned to that person if the claim had been made before the hard bar date.

(10) No interest is payable on the debt for which a person makes an unsecured claim under paragraph (9).

(11) This regulation does not apply to client money.

(12) In this regulation—

"distribution plan" means a plan for the return of client assets which the administrator is required to draw up in accordance with insolvency rules after setting a soft bar date;

"eligible claimant" means a person who submits a claim for the return of client assets on or before the hard bar date;

"hard bar date" means a final date for the submission of client asset claims;

"hard bar date notice" means a notice which specifies a hard bar date and includes a statement that after the end of that day the administrator—

(a) may dispose of client assets still held by the investment bank after the administrator has returned client assets to any eligible claimants; and

(b) may, consequently, be unable to meet any further client asset claims;

"client asset claims" means—

(a) claims to the beneficial ownership, or other form of ownership, of the client assets, or

(b) claims of persons in relation to a security interest asserted over, or other entitlement to, those assets,

and includes claims that are contingent or disputed; and

"soft bar date" means a bar date set under regulation 11.

Objectives 1 and 3—client money which the administrator is unable to return to clients

12C.—(1) This regulation applies where the administrator, after setting a soft bar date, thinks it is appropriate, in order to achieve Objective 1, to close the client money pool and treat any further client money claim as an unsecured claim.

(2) The administrator may by a hard bar date notice set a final date for the submission of client money claims.

(3) The administrator may not set a hard bar date without the approval of the court given on application by the administrator.

(4) Where the administrator sets a hard bar date, the client money pool is to be treated as having been closed at the end of that day, and the administrator—

(a) may not meet any client money claim made after the hard bar date;

(b) must return client money to eligible claimants; and

(c) must, as soon as reasonably practicable, transfer to the investment bank's own bank accounts the balance of the client money pool which the bank holds after returning client money to any eligible claimants.

(5) A client money claim received by the administrator after the hard bar date ranks as an unsecured claim.

(6) No interest is payable on the debt for which a person makes such a claim.

(7) In this regulation—

"client money claims" has the same meaning as in regulation 12A;

"eligible claimant" means a person who submits a client money claim on or before the hard bar date;

"hard bar date" means a final date for the submission of client money claims;

"hard bar date notice" means a notice which specifies a hard bar date and includes a statement that after the end of that day the administrator—

(a) may transfer to the investment bank's own bank accounts the balance of the client money pool which the bank holds after the return of client money to any eligible claimants; and

(b) may not meet any further client money claims; and

"soft bar date" means a bar date set under regulation 12A.

Procedure for court application to set a hard bar date

12D.—(1) This regulation sets out the procedure for an application under regulation 12B(3) or 12C(3) for the approval of the court to set a hard bar date ("application to set a hard bar date").

(2) On an application to set a hard bar date the court may—

(a) make an order approving the setting of a hard bar date;

(b) adjourn the hearing of the application conditionally or unconditionally; or

(c) make any other order that the court thinks appropriate.

(3) The court may make an order under paragraph (2)(a) only if it considers that if a hard bar date is set there is no reasonable prospect that the administrator will receive claims for the return of client assets after that date.

(4) In paragraph (3) the reference to claims for the return of client assets includes a reference to claims of persons in relation to a security interest asserted over, or other entitlement to, those assets.î.

Continuity of supply

13. In regulation 14 (continuity of supply) in paragraph (6), in the definition of "supply" before paragraph (a) insert—

ì(za)services relating to the safeguarding or administration of client assets;î.

Responsibility for certain costs of the administration

14. After regulation 19 insert—

ì**Responsibility for certain costs of the administration**

19A.—(1) Where the administrator considers that relevant costs have been incurred in consequence of a failure by the investment bank to comply with any provision of these Regulations or with client money rules ("a default"), the administrator—

(a) may seek the agreement of the creditors who are members of the creditors' committee established under paragraph 57 of Schedule B1 (as applied by regulation 15) to the amount incurred in consequence of the default; or

(b) if there is no creditors' committee or the administrator is unable to agree that amount with the creditor members of the creditors' committee, may apply to the court for an order fixing the amount.

(2) On an application under paragraph (1)(b), the court may fix the amount incurred in consequence of the default or dismiss the application on the ground that there was no default or that no relevant costs have been incurred in consequence of the default.

(3) Paragraph (4) applies where the creditor members of the creditors' committee agree an amount incurred in consequence of the default or the court fixes an amount by order.

(4) Notwithstanding any provision in insolvency rules prescribing how the expenses of the special administration are to be paid, responsibility for the amount of relevant costs so agreed or fixed is assigned to the investment bank, and accordingly that amount is to be paid out of the bank's assets.

(5) In this regulation "relevant costs" means costs incurred by the administrator of applying the procedure set out in Schedule B1 (as applied by regulation 15 and as prescribed) for ascertaining particulars of the client assets held by the investment bank, and of taking custody and control and distributing those assets.î.

PART 4

Transitional provisions

Transitional provision for Part 3

15.—(1) Part 3 of these Regulations does not have effect in relation to an investment bank which is in special administration on the date on which these Regulations come into force.

(2) For the purpose this regulation an investment bank is in special administration on that date if the appointment of the administrator took effect before that date under—

(a) a special administration order made under regulation 7 of the Investment Bank Special Administration Regulations 2011 ("the principal Regulations");

(b) a special administration (bank insolvency) order made under section 97(1) of the Banking Act 2009(**a**) (as applied by paragraph 6 of Schedule 1 to the principal Regulations); or

(**a**) 2009 c. 1.

(c) a special administration (bank administration) order made under section 144 of the Banking Act 2009 (as applied by paragraph 6 of Schedule 2 to the principal Regulations).

(3) Where paragraph (2)(b) or (c) applies to an investment bank which is a partnership, paragraph 6 of Schedule 1 to the principal Regulations or paragraph 6 of Schedule 2 to those Regulations (as the case may be) must be read with paragraph 3(a) of Schedule 4 to those Regulations.

Name
Name

Date

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations extend the definition of "investment bank" in section 232 of the Banking Act 2009 (c. 1) ("the Act") and amend the Investment Bank Special Administration Regulations 2011 ("the principal Regulations").

The principal Regulations provide a special administration regime for investment banks (as defined in section 232 of the Act). Part 2 of these Regulations brings two specified classes of institution within the definition of "investment bank" and amends section 232 of the Act in consequence of that change.

Part 3 of these Regulations amends the principal Regulations to implement certain recommendations made by Peter Bloxham in his review of the principal Regulations conducted under section 236 of the Act. The final review was presented to Parliament under that section in January 2014 and is available on HM Treasury's website (www.gov.uk/treasury) or from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

Regulation 5 amends regulation 2(1) of the principal Regulations to provide for the interpretation of expressions used in provisions inserted or substituted by other amendments.

Regulation 7 inserts regulations 10A and 10B of the principal Regulations. Regulation 10A requires the administrator to work with the FSCS. Regulation 10B requires persons with whom the investment bank maintains an account for holding client assets and counterparties to certain contracts with the investment bank to work with the administrator to facilitate the achievement of Objective 1 (the return of client assets).

Regulation 8 inserts regulations 10C to 10E of the principal Regulations, which apply where the administrator, in pursuit of Objective 1, arranges a transfer of the whole or part of the investment bank's business to another financial institution. Regulation 10C removes restrictions to the transfer of clients' assets and contracts which are associated with the business transfer, and has the effect of treating them as if they had been made by the transferee. Regulations 10D and 10E set out restrictions on what may be transferred by an arrangement which transfers just part of the bank's business.

Regulation 9 inserts regulations 10F and 10G of the principal Regulations. Regulation 10F requires the administrator to—

- carry out a reconciliation of records and accounts showing the amount of client money held by the investment bank with records and accounts showing the amount of client money held by the bank in its client accounts; and
- make any transfer between client accounts and the investment bank's own bank accounts which is necessary to balance the amount of client money which ought to be segregated with the amount that is segregated.

Regulation 10G provides that a client is not entitled to interest on a debt arising from the investment bank's liability to return client money for the period starting when the bank enters special administration. This applies where a client brings an unsecured claim for payment of such a debt instead of a claim for a distribution from the pool of client money held by the bank on trust under FCA rules about handling client money.

The amendments in regulations 10 and 12 make provision about setting bar dates for the submission of claims for the return of client assets. A "soft bar date" does not bar a client who has failed to claim in a distribution from claiming in a subsequent distribution. A "hard bar date" is a final date for submitting claims.

Regulation 10 amends regulation 11 of the principal Regulations, which allows the administrator to set a soft bar date for the return of client assets other than client money. After setting a soft bar date the administrator must return assets in accordance with insolvency rules, but may not do so without court approval. The amendments allow assets to be returned without court approval as long as the administrator has not yet applied for court approval to return any assets, the beneficial

owner has been identified and the assets are not securities held in an account made up of multiple accounts of clients.

Regulation 12 inserts regulations 12A to 12D of the principal Regulations to allow the administrator to set a soft bar date for claims for the return of client money (regulation 12A), a hard bar date for such claims (regulation 12C) and a hard bar date for claims for the return of client assets other than client money (regulation 12B). Under regulation 12B late claims may be met from residual assets or, if the administrator has disposed of residual assets, may be pursued as unsecured claims. Under regulation 12C late claims may be pursued as unsecured claims. Regulation 12D sets out the procedure for applications to set a hard bar date.

Regulation 13 amends regulation 14 of the principal Regulations to extend provision for the continuation of specified kinds of supply contract to contracts for services relating to the safe custody of client assets.

Regulation 14 inserts regulation 19A of the principal Regulations to provide for payment out of the investment bank's assets of any costs of identifying and distributing client assets which are incurred in consequence of a failure by the investment bank to comply with the principal Regulations or with FCA rules about handling client money.

Part 4 of these Regulations makes transitional provision with respect to Part 3 of these Regulations. It provides that none of the amendments of the principal Regulations has effect in relation to an investment bank put into special administration before the date on which these Regulations come into force.

An impact assessment of the effect of these Regulations on the costs of business and the voluntary sector has been prepared and is available on HM Treasury's website (www.gov.uk/treasury) or from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum for these Regulations.