STATUTORY INSTRUMENTS

2017 No. 443

FINANCIAL SERVICES AND MARKETS

The Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2017

Made - - - - 16th March 2017

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(**1**) (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 2017, and come into force on the 21st day after the day on which they are made.

(**1**) 2009 c. 1. Sections 232 to 236 have been amended by the Financial Services Act 2012 (c. 21), section 106 and Schedule 17, Part 4. Section 232 has also been amended by S.I. 2011/239 and 2013/636.

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.

(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(**2**) to carry on the activity specified by article 51ZA of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**3**) (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—

"(aa) managing an AIF or a UCITS,

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

(b) after subsection (2) insert—

"(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(**4**).".

PART 3

Investment bank insolvency regulations

Amendment of the Investment Bank Special Administration Regulations 2011

4. The Investment Bank Special Administration Regulations 2011(**5**) are amended as follows.

Interpretation of additional expressions

5. In regulation 2 (interpretation)—

(a) in paragraph (1)—

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

(**2**) 2000 c. 8. Part 4A was substituted by the Financial Services Act 2012, section 11(2).
(**3**) S.I. 2001/544, as amended by S.I. 2013/1773. There are other amendments, but they are not relevant to these Regulations.
(**4**) See the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), 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).
(**5**) S.I. 2011/245, as amended by S.I. 2013/472 and 2017/400. There are other amendments, but they are not relevant to these Regulations.

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

(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;

"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;

"client money rules" means rules made under Part 9A of FSMA(**6**) (rules and guidance) which make provision relating to the handling and distribution of money held by a person who is authorised for the purposes of FSMA;";

(ii) after the definition of "FCA" insert—

""foreign property" has the meaning given by section 39(2) of the Act;"; and

(b) after paragraph (2) insert—

"(2A) In these Regulations a reference to the investment bank's own bank accounts includes a reference to any account, other than a client money account, opened by the administrator for the purposes of the special administration.".

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—

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

10A.—(1) The administrator must—

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

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

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

(d) at the request of the FSCS, provide any assistance identified by the FSCS as being necessary for the purpose of enabling the FSCS to administer the compensation scheme in relation to the entitlement of clients of the investment bank to compensation.

(2) Where the administrator is required by this regulation to provide any information or produce any document, the administrator may provide the information or produce the document in hard copy or in electronic format.

(**6**) Part 9A of FSMA was substituted by the Financial Services Act 2012, section 24(1).

(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).".

Transfer of client assets

8. After regulation 10A(**7**) insert—

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

10B.—(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 10C to 10G.

(3) The transfer of client assets which the investment bank has undertaken to hold under a client contract and of relevant rights and liabilities is to have effect in spite of any—

(a) restriction affecting what can or cannot be assigned or transferred by the investment bank (whether generally or by a particular person or particular description of persons);

(b) requirement to give notice to, or 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, except that in paragraph (3)(a) a restriction does not include a restriction in client money rules.

(5) To the extent that rights and liabilities under a client contract are transferred by the arrangement, the contract is to be treated for the purposes of the arrangement as if it had been made by the transferee rather than the investment bank.

(6) The transferee may vary the terms of client contracts without obtaining the agreement of persons who are party to the contracts to the extent necessary for giving effect to the transfer and ensuring that the powers, rights and obligations of the transferee acting as a trustee are exercisable.

(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 rights and liabilities under client contracts.

(8) Subject to paragraph (9), paragraph (7) overrides any contractual or other requirement to keep information in confidence.

(**7**) Regulation 10A is inserted by regulation 7 of these Regulations.

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

(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) For the purposes of this regulation, if 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 none of regulations 10C to 10G applies 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 reference to rights and liabilities of the investment bank or to rights and liabilities under a client contract, in relation to property held by the investment bank on trust (however arising), includes a reference to—

(a) the legal and beneficial interest of the investment bank in the property; and

(b) the powers and obligations of the investment bank acting as a trustee of the property.

(13) In this regulation—

"client assets" means client assets (within the meaning given by section 232(4) of the Act) and 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 investment bank's holding of client assets for that client;

"partial property transfer" means an arrangement of a kind referred to in paragraph (1) for the transfer of some, but not all, of the property, rights and liabilities of the investment bank; 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 any client assets which are to be transferred by the arrangement.

Restrictions on partial property transfers—general provision

10C.—(1) Regulation 10B has effect in relation to a partial property transfer as if paragraph (3)(b) of that regulation were omitted.

(2) Paragraph (1) does not apply in relation to the transfer of protected rights and liabilities (within the meaning given in regulation 10D(2)) or the transfer of any property, benefits, rights or liabilities to which regulation 10E, 10F or 10G applies.

(3) A partial property transfer must include such provision as the administrator thinks appropriate—

(a) to ensure that a client whose client assets are to be transferred by the arrangement will be entitled to demand a transfer back to the investment bank of assets which are transferred ("reverse transfer");

(b) for the identification of assets for the purposes of a reverse transfer; and

(**8**) 1998 c. 29.