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STATUTORY INSTRUMENTS

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**2017 No. 1247**

**FINANCIAL SERVICES AND MARKETS**

**The Companies Act 1989 (Financial Markets  
and Insolvency) (Amendment) Regulations 2017**

*Made* - - - - *11th December 2017*  
*Laid before Parliament* *12th December 2017*  
*Coming into force* - - *3rd January 2018*

The Treasury are designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to financial services.

The Treasury make these Regulations in exercise of the power conferred upon them by section 2(2) of the European Communities Act 1972.

**Citation and commencement**

1. These Regulations may be cited as the Companies Act 1989 (Financial Markets and Insolvency) (Amendment) Regulations 2017 and come into force on 3rd January 2018.

**Amendments to Part 7 of the Companies Act 1989**

2.—(1) Part 7 of the Companies Act 1989 (financial markets and insolvency)<sup>(3)</sup> is amended as follows.

(2) In section 155A (qualifying collateral arrangements and qualifying property transfers)<sup>(4)</sup>, for subsection (4)(aa)<sup>(5)</sup>, substitute—

“(aa) transfers of property made in accordance with Article 4(6) and (7) of the EMIR Level 2 Regulation or Article 4(6) and (7) of the MIFIR Level 2 Regulation;”.

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(1) [S.I. 2012/1759](#).

(2) [1972 c. 68](#). Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act [2006 \(c. 51\)](#) and the European Union (Amendment) Act [2008 \(c. 7\)](#), Schedule Part 1. By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act [1993 \(c.51\)](#) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L1, 3.11.1994, p.3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L1, 3.1.1994, p.572).

(3) [1989 c. 40](#).

(4) Section 155A was inserted by [S.I. 2013/504](#).

(5) Subsection (4)(aa) was inserted by [S.I. 2013/1908](#).

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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(3) In section 182A (recognised central counterparties: disapplication of provisions on mutual credit and set-off)(6)—

- (a) in subsection (1)(a), for “or Article 3(1) of the EMIR Level 2 Regulation” substitute “, Article 3(1) of the EMIR Level 2 Regulation or Article 3(1) of the MIFIR Level 2 Regulation”;
- (b) in subsection (2)(a), for “Articles 4(2) and (3) of the EMIR Level 2 Regulation” substitute “Article 4(2) of the EMIR Level 2 Regulation or Article 4(2) of the MIFIR Level 2 Regulation”.

(4) In section 188(1A)(b) (meaning of “default rules” and related expressions)(7), for “Article 4(4) of the EMIR Level 2 Regulation” substitute “Article 4(6) and (7) of the EMIR Level 2 Regulation or Article 4(6) and (7) of the MIFIR Level 2 Regulation”.

(5) In section 190(1) (minor definitions)—

- (a) in the definition of the “EMIR Level 2 Regulation”(8), at the end add “as amended by Commission Delegated Regulation (EU) 2017/2155 of 22 September 2017(9)”;
- (b) after the definition of “member of a clearing house”(10) insert—

““MIFIR Level 2 Regulation” means Commission Delegated Regulation (EU) 2017/2154 of 22 September 2017 supplementing Regulation (EU) No. 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements(11);”.

(6) In section 191 (index of defined expressions), in the table, below the row beginning “member of a clearing house” insert the following row—

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“MIFIR Level 2 Regulation	Section 190(1)”.
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*David Evennett  
Mark Spencer*

Two Lords Commissioners of Her Majesty’s  
Treasury

11th December 2017

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(6) Section 182A was inserted by [S.I. 2013/504](#) and amended by [S.I. 2013/1908](#).

(7) Subsection (1A) was inserted by [S.I. 2013/1908](#).

(8) The definition of “EMIR Level 2 Regulation” was inserted by [S.I. 2013/504](#).

(9) O.J. 21.11.2017 L 304/13

(10) The definition of “member of a clearing house” was inserted by [S.I. 2013/504](#).

(11) O.J. 21.11.2017 L 304/6

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make amendments to Part 7 of the Companies Act 1989 (c.40) as a consequence of amendments made to Commission Delegated Regulation (EU) No. 149/2013 of 19 December 2012 by Commission Delegated Regulation (EU) 2017/2155 of 22 September 2017 (O.J. 21.11.2017 L 304/13) and the adoption of Commission Delegated Regulation (EU) 2017/2154 of 22 September 2017 supplementing Regulation (EU) No. 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements (O.J. 21.11.2017 L 304/6).

Those Commission Delegated Regulations require new segregated account structures to be provided by the central counterparty (CCP) and the clearing members of the CCP for indirect clients for both over the counter and exchange traded derivative transactions. An indirect client is a client of a client of a clearing member.

Part 7 of the Companies Act 1989 provides for protections for certain financial services transactions from provisions in insolvency law. These Regulations amend the provisions in Part 7 which facilitate the segregation of indirect client accounts at a clearing member and the transfer of indirect client accounts on the failure of a client providing indirect clearing services. References in Part 7 to Commission Delegated Regulation (EU) No. 149/2013 are updated, and new references to Commission Delegated Regulation (EU) 2017/2154 are inserted.

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.