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STATUTORY INSTRUMENTS

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**2001 No. 3592**

The Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001

**PART VI**

PROCEEDINGS OF RECOGNISED SELF-REGULATING ORGANISATIONS

CHAPTER III

INCOMPLETE APPEALS

**Definition of “disciplinary measure”**

**76.**—(1) In this Chapter, a “disciplinary measure” means—

- (a) any measure imposed by a disciplinary tribunal in accordance with Rule 6.7(6) of Chapter VIII of the IMRO rules;
- (b) any measure imposed by a tribunal in accordance with Rule 10.4.3 of Chapter 10 of the PIA rules;
- (c) any measure imposed by a disciplinary tribunal in accordance with rule 7–30 (penalties), 7–30A (terms and conditions) or 7–31 (compensation orders) of Chapter 7 of the SFA rules.

(2) This Chapter applies only to a disciplinary measure imposed—

- (a) on an authorised person (within the meaning of the Act) who was a member of the recognised self-regulating organisation immediately before commencement; or
- (b) in respect of post commencement actionable misconduct by an individual who was immediately before commencement—
  - (i) a registered individual for the purposes of Rule 1.2.(2) to (4) of Chapter IV and Chapter VIII of the IMRO rules or a person who had, before commencement, ceased to be a registered individual but who was treated as a registered individual for the purposes of Rule 1.2(2) to (4) of Chapter IV and Chapter VIII of the IMRO rules;
  - (ii) a registered individual or former registered individual for the purposes of the PIA rules;
  - (iii) a registered person or former registered person for the purposes of SFA rules.

(3) “Post commencement actionable misconduct” for the purposes of paragraph (2)(b) is any failure, misconduct or contravention—

- (a) in respect of which the Authority would have power, by virtue of article 9(3) of the Civil Remedies Order, to take action after commencement under section 66, or
- (b) which the Authority would be entitled to take into account in the exercise of its powers under section 63.

### **Incomplete appeals against disciplinary measure**

77.—(1) This article applies where—

- (a) a disciplinary measure was imposed on a person;
- (b) that person has exercised a right to appeal against the imposition of that measure before commencement; but
- (c) that appeal has not been determined before commencement.

(2) In a case where this article applies, the Authority must, as soon as practicable after commencement, refer the matter to the interim tribunal to determine the appeal and must notify the appellant that it has done so and of the effect of this Order.

(3) The interim tribunal has jurisdiction to determine the appeal referred to it under paragraph (2).

(4) For the purposes of paragraph (1)(b), a right to appeal means—

- (a) in respect of a disciplinary measure imposed by IMRO, a right under Rule 6.7(10) in Chapter VIII of the IMRO rules to refer the matter to the Appeals Tribunal constituted in accordance with that Chapter;
- (b) in respect of a disciplinary measure imposed by the PIA, a right under Rule 10.5.2(1) of Chapter 10 of the PIA rules to refer the matter to the Appeal Commissioner having jurisdiction in accordance with that Chapter;
- (c) in respect of a disciplinary measure imposed by the SFA, a right under rule 7–34(3) and 7–34(4) of Chapter 7 of the SFA rules to refer the matter to the Disciplinary Appeal Tribunal constituted in accordance with that Chapter.

### **Task of interim tribunal when determining an appeal against disciplinary measure**

78.—(1) Where the interim tribunal hears an appeal referred to it under article 77(2), it must—

- (a) determine whether the imposition of the disciplinary measure was unlawful or was not justified by the evidence on which it was based;
- (b) remit the matter to the Authority with such directions (if any) as the interim tribunal considers appropriate for giving effect to its determination.

(2) The interim tribunal may consider only the evidence which was considered in the course of the proceedings which resulted in the imposition of the disciplinary measure, unless fresh evidence come to light which could not reasonably have been made available then by the party now seeking to adduce it.

(3) Articles 59, 60 and 61 apply to the determination of the interim tribunal and to the action taken by the Authority following a direction by the interim tribunal under paragraph (1).

### **Preservation of right of appeal against disciplinary measure**

79.—(1) Where before commencement—

- (a) a disciplinary measure has been imposed on a person;
- (b) the period set by the rules of the organisation which imposed the disciplinary measure during which a right to appeal may be exercised has not expired;
- (c) the right to appeal has not been exercised in accordance with the rules of that body,

the person who had a right to appeal against the imposition of the measure may refer the matter to the Financial Services and Markets Tribunal.

(2) Section 133 applies to the Tribunal in respect of a reference made under paragraph (1) with the following modifications—

- (a) section 133(1)(a) applies as if the period mentioned was so much of the period referred to in paragraph (1)(b) above as had not expired at commencement;
  - (b) as if subsection (3) provided that on such a reference, the Tribunal may consider only the evidence which was considered in the course of the proceedings which resulted in the imposition of the disciplinary measure, unless fresh evidence comes to light which could not reasonably have been made available then by the party now seeking to adduce it;
  - (c) as if subsection (4) provided that on determining the appeal, the Tribunal must determine whether the imposition of the disciplinary measure was unlawful or was not justified by the evidence and must remit the matter to the Authority with such directions (if any) as the Tribunal considers appropriate having regard to its determination;
  - (d) as if subsections (6), (7), (8), (9) and (12) did not apply.
- (3) For the purposes of paragraph (1) a right to appeal has the same meaning as in article 77(4).
- (4) Article 60 applies to the power of the Tribunal under this article, and to the Authority in giving effect to a direction from the Tribunal as it applies to directions given by the interim tribunal under article 58 and to the action of the Authority in giving effect to such directions.

#### **Modification of Tribunal Rules**

**80.** The Schedule to this Order has effect for the purposes of modifying the Financial Services and Markets Tribunal Rules 2001 as they apply to references made under article 79.

#### **Definition of “intervention measure”**

**81.** In this Chapter, an “intervention measure” means—

- (a) an Intervention within the meaning of Rule 2.1 and 2.2 of Chapter VIII of the IMRO rules;
- (b) an intervention notice given under Rule 9.3 of the PIA rules;
- (c) an intervention order imposed by Rule 7–12 of the SFA rules.

#### **Intervention measure stayed before commencement**

**82.—**(1) This article applies where before commencement—

- (a) an intervention measure had been imposed on an authorised person (within the meaning of the Act) who was a member of a recognised self-regulating organisation immediately before commencement; and
  - (b) a stay had been granted preventing the intervention measure from coming into effect at any time before commencement.
- (2) In a case where this article applies—
- (a) the person on whom the intervention measure was imposed is not to be treated as subject to that measure immediately before commencement for the purposes of article 35 of the Authorised Persons Order; and
  - (b) any proceedings in respect of an appeal brought by the person against the measure lapse at commencement.

#### **Intervention measure not stayed before commencement**

**83.—**(1) This article applies where before commencement—

- (a) an intervention measure had been imposed on an authorised person (within the meaning of the Act) who was a member of a recognised self-regulating organisation immediately before commencement; and

- (b) no stay had been granted preventing the intervention measure from coming into effect at any time before commencement;
  - (c) the measure has effect after commencement as a requirement imposed under section 43 or 196 of the Act by virtue of article 35 of the Authorised Persons Order; and
  - (d) either—
    - (i) the person on whom the measure was imposed has exercised a right to appeal in respect of the imposition of that measure but that appeal has not been determined before commencement; or
    - (ii) the period (if any) set by the rules of the organisation for the exercise of the right to appeal in respect of that measure has not expired and no appeal has been lodged in accordance with the rules of that body.
- (2) In a case where this article applies—
- (a) any appeal proceedings in train at commencement in respect of the measure lapse;
  - (b) the person may refer the measure having effect by virtue of article 35 of the Authorised Persons Order to the Tribunal under section 55(2).
- (3) Where the imposition of an intervention measure is referred to the Tribunal under paragraph (2), section 133 and the Financial Services and Markets Tribunal Rules 2001 apply to the reference as if the notice by which the intervention measure was imposed before commencement were a supervisory notice.
- (4) For the purposes of paragraph (1) a right to appeal means—
- (a) in respect of an intervention measure imposed by IMRO, a right under rule 2.3(5) of Chapter VIII of the IMRO rules to appeal to the Appeal Tribunal constituted in accordance with Section 7 of that Chapter;
  - (b) in respect of an intervention measure imposed by the PIA, a right—
    - (i) under Rule 9.4(2) or 9.7.1(1) of the PIA rules to refer the matter to the Membership and Disciplinary Tribunal; or
    - (ii) under Rules 9.7.2(2) and 11.2.1(2) to refer the matter from the Membership and Disciplinary Tribunal to the PIA Appeals Commissioner;
  - (c) in respect of an intervention measure imposed by the SFA, a right under rule 7–20 of the SFA Rules to refer the matter to the chairman or a deputy chairman of the Tribunal Panel in accordance with that rule.

### **Intervention measure against registered individual or person**

- 84.**—(1) This article applies where before commencement—
- (a) an intervention measure had been imposed on a registered person or individual;
  - (b) the measure would (but for this article) have effect after commencement as a limitation on the approval of that person under section 59 by virtue of article 72(2)(b) or 73(3) of the Authorised Persons Order; and
  - (c) either—
    - (i) the person on whom the measure was imposed has exercised a right to appeal in respect of the imposition of that measure but that appeal has not been determined before commencement; or
    - (ii) the period (if any) set by the rules of the body imposing the measure for the exercise of the right to appeal in respect of that measure has not expired and no appeal has been lodged in accordance with the rules of that body.

(2) In a case where this article applies (and whether or not a stay was granted before commencement)—

- (a) the intervention measure is to be disregarded for the purposes of article 72(2)(b) or 73(3) of the Authorised Persons Order;
- (b) any appeal proceedings in train in respect of the measure lapse at commencement.

(3) For the purposes of paragraph (1), a right to appeal has the same meaning it has for the purposes of article 83(1).

### **Summary fine imposed before commencement**

**85.**—(1) This article applies where—

- (a) a summary fine was imposed on a person before commencement; and
- (b) either—
  - (i) the person on whom the fine was imposed has exercised a right to appeal against the imposition of that fine but that appeal has not been determined before commencement; or
  - (ii) the period set by the rules of the organisation which imposed the fine for the exercise of the right to appeal against that fine has not expired and no appeal has been lodged in accordance with the rules of that body.

(2) In a case where this article applies, the Authority must, if the person on whom the fine was imposed requests, refer the matter to the interim tribunal.

(3) For the purposes of this article, a summary fine is a fine imposed—

- (a) by IMRO under Rule 3.1 of Chapter VIII of the IMRO rules;
- (b) by the SFA under Rule 7–45 of the SFA Rules.

(4) Where the imposition of a summary fine is referred to the interim tribunal under paragraph (2) the interim tribunal must—

- (a) consider whether the decision to impose it was unlawful or was not justified by the evidence on which it was based;
- (b) either cancel the fine or remit the matter to the Authority with a direction to impose a penalty under section 66(3)(a).

(5) Where the Authority imposes a penalty on a person under section 66(3)(a) following a direction from the interim tribunal, section 67 does not apply to the exercise of that power but—

- (a) the Authority must exercise the power by giving written notice to the person concerned; and
- (b) sections 390(3), (4), (5), (8) and (9) and 391(4) apply to that notice as they apply to a final notice.