



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART VI

#### OFFICIAL LISTING<sup>F1F1</sup>

##### *Penalties*

#### 91 [<sup>F1</sup>Penalties for breach of Part 6 rules]

[<sup>F2</sup>(1) If the competent authority considers that—

- (a) in relation to a listed security, an issuer or applicant for listing; or
- (b) in relation to a financial instrument—
  - (i) an issuer who has requested or approved the admission of the instrument to trading on a regulated market,
  - (ii) a person discharging managerial responsibilities within such an issuer, or
  - (iii) a person connected to such a person discharging managerial responsibilities, has contravened any provision of the Part 6 rules, it may impose on him a penalty of such amount as it considers appropriate.

[<sup>F3</sup>(1A) If the competent authority considers that—

- (a) an issuer of transferable securities,
  - (b) a person offering transferable securities to the public or requesting their admission to trading on a regulated market,
  - (c) an applicant for the approval of a prospectus in relation to transferable securities,
  - (d) a person on whom a requirement has been imposed under section 87K or 87L, or
  - (e) any other person to whom a provision of the prospectus directive applies,
- has contravened a provision of this Part or of prospectus rules, or a provision otherwise made in accordance with the prospectus directive or a requirement

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imposed on him under such a provision, it may impose on him a penalty of such amount as it considers appropriate.]

- (2) If, in the case of a contravention [<sup>F4</sup>by a person] referred to in subsection (1)(a) [<sup>F5</sup>, (1)(b)(i) or (1A) (“P”)], the competent authority considers that [<sup>F6</sup>another person] who was at the material time a director of [<sup>F7</sup>P] was knowingly concerned in the contravention, it may impose upon him a penalty of such amount as it considers appropriate.]
- (3) If the competent authority is entitled to impose a penalty on a person under this section in respect of a particular matter it may, instead of imposing a penalty on him in respect of that matter, publish a statement censuring him.
- (4) Nothing in this section prevents the competent authority from taking any other steps which it has power to take under this Part.
- (5) A penalty under this section is payable to the competent authority.
- (6) The competent authority may not take action against a person under this section after the end of the period of two years beginning with the first day on which it knew of the contravention unless proceedings against that person, in respect of the contravention, were begun before the end of that period.
- (7) For the purposes of subsection (6)—
- (a) the competent authority is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred; and
  - (b) proceedings against a person in respect of a contravention are to be treated as begun when a warning notice is given to him under section 92.

#### Textual Amendments

- F1** S. 91 heading substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 7\(4\)](#)
- F2** S. 91(1)(2) substituted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, [Sch. 1 para. 4](#)
- F3** S. 91(1A) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 7\(2\)](#)
- F4** Words in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 7\(3\)\(a\)](#)
- F5** Words in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 7\(3\)\(b\)](#)
- F6** Words in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 7\(3\)\(c\)](#)
- F7** Word in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 7\(3\)\(d\)](#)

#### Modifications etc. (not altering text)

- C1** S. 91(6)(7) applied (with modifications) (1.12.2001) by [S.I. 2001/2957](#), [arts. 1, 11\(4\)-\(6\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

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## 92 Procedure.

- (1) If the competent authority proposes to take action against a person under section 91, it must give him a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.
- (4) If the competent authority decides to take action against a person under section 91, it must give him 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 competent authority decides to take action against a person under section 91, he may refer the matter to the Tribunal.

### Modifications etc. (not altering text)

- C2** S. 92(1)(3)(4)(6)(7) applied (with modifications) (1.12.2001) by S.I. 2001/2957, arts. 1, 11(3), 12, 13; S.I. 2001/3538, art. 2(1)

## 93 Statement of policy.

- (1) The competent authority must prepare and issue a statement (“its policy statement”) of its policy with respect to—
  - (a) the imposition of penalties under section 91; and
  - (b) the amount of penalties under that section.
- (2) The competent authority’s policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention in question in relation to the nature of the requirement contravened;
  - (b) the extent to which that contravention was deliberate or reckless; and
  - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) The competent authority may at any time alter or replace its policy statement.
- (4) If its policy statement is altered or replaced, the competent authority must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, its power under section 91 in the case of any particular contravention, the competent authority must have regard to any policy statement published under this section and in force at the time when the contravention in question occurred.
- (6) The competent authority must publish a statement issued under this section in the way appearing to the competent authority to be best calculated to bring it to the attention of the public.

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- (7) The competent authority may charge a reasonable fee for providing a person with a copy of the statement.
- (8) The competent authority must, without delay, give the Treasury a copy of any policy statement which it publishes under this section.

**94 Statements of policy: procedure.**

- (1) Before issuing a statement under section 93, the competent authority must publish a draft of the proposed statement in the way appearing to the competent authority to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the competent authority within a specified time.
- (3) Before issuing the proposed statement, the competent authority must have regard to any representations made to it in accordance with subsection (2).
- (4) If the competent authority issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2); and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the competent authority, significant, the competent authority must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The competent authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.

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