

2001 No. 2476

**FINANCIAL SERVICES AND MARKETS
TRIBUNALS**

The Financial Services and Markets Tribunal Rules 2001

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The Lord Chancellor, in exercise of the powers conferred on him by sections 132(3) and 137(6) of, and paragraph 9 of Schedule 13 to, the Financial Services and Markets Act 2000^(a), and all other powers enabling him in that behalf, and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992^(b), makes the following Rules:

PART I

INTRODUCTION

Citation and commencement

1. These Rules may be cited as the Financial Services and Markets Tribunal Rules 2001 and shall come into force on the day on which section 132(2) of the Act comes into force.

Interpretation

2.—(1) In these Rules, unless the context requires otherwise—

“the Act” means the Financial Services and Markets Act 2000;

“applicant” means a person who refers a case to the Tribunal and, if there is more than one such person, “applicant” means each such person;

(a) 2000 c. 8.

(b) 1992 c. 53. By virtue of paragraph 18 of Schedule 1 to the Tribunals and Inquiries Act 1992, as amended by paragraph 6(2) of Schedule 20 to the Financial Services and Markets Act 2000, the Financial Services and Markets Tribunal is a tribunal under the general supervision of the Council on Tribunals. Other amendments made to section 8 of, and Schedule 1 to, the Tribunals and Inquiries Act 1992 are not relevant to these Rules.

“the Authority” means the Financial Services Authority;

“Authority notice” means the decision notice, supervisory notice or other notice relating to the referred action that was given to the applicant by the Authority;

“Chairman” means the person from time to time acting as chairman of the Tribunal in respect of a reference;

“direction” includes any direction, summons or order given or made by the Tribunal;

“documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“file” means send to the Tribunal;

“further material” means documents which—

- (a) were considered by the Authority in reaching or maintaining the decision to give an Authority notice; or
- (b) were obtained by the Authority in connection with the matter to which that notice relates (whether they were obtained before or after giving the notice) but which were not considered by it in reaching or maintaining that decision,

but does not include documents on which the Authority relies in support of the referred action;

“party” means the applicant or the Authority (or, if there is more than one applicant, any of the applicants or the Authority) and “other party” shall be construed accordingly;

“protected item” has the meaning in section 413;

“reference” means a reference to the Tribunal under or by virtue of the Act or any other enactment (including an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978)(a);

“reference notice” means a notice filed under rule 4(1);

“referred action” means the act (or proposed act) on the part of the Authority that gave rise to the reference;

“register” means the register of references and decisions kept in connection with the Tribunal’s functions and which is open to the inspection of any person without charge at all reasonable hours;

“reply” means a reply filed by the applicant under rule 6(1);

“representations” means written representations or (with the consent of the Tribunal, or at its request) oral representations;

“response document” means:

- (a) in relation to the Authority, its statement of case;
- (b) in relation to the applicant, his reply;

“the Secretary” means the person from time to time appointed as secretary to the Tribunal, being a member of staff appointed under paragraph 6(1) of Schedule 13;

“statement of case” means a statement filed by the Authority under rule 5(1);

“supplementary statement” means a statement that is supplementary to a response document and filed in accordance with a direction given under rule 10(1)(f); and

“the Tribunal” means the Financial Services and Markets Tribunal.

- (2) Unless the context requires otherwise—
 - (a) a reference in these Rules to a rule by number alone means the rule so numbered in these Rules;
 - (b) a reference in these Rules to a section or Schedule by number alone means the section or Schedule so numbered in the Act;
 - (c) words and expressions defined in the Act have the same meaning in these Rules; and
 - (d) anything permitted or required by these Rules to be done by a party may be done by any representative of that party.

Application of these Rules

3. These Rules apply to all references to the Tribunal.

(a) 1978 c. 30.

PART II

PRELIMINARY MATTERS

Reference notice

4.—(1) A reference shall be made by way of a written notice (“the reference notice”) signed by or on behalf of the applicant and filed by the applicant.

(2) In any case not covered by section 133(1)(a) (which provides that a reference must be made before the end of the period of 28 days beginning with the date on which a decision notice or supervisory notice is given), the period specified for the purposes of section 133(1)(b) (such other period as may be specified for making a reference) shall be the period of 28 days beginning with the date on which the Authority notice is given.

(3) The reference notice shall state—

- (a) the name and address of the applicant;
- (b) the name and address of the applicant’s representative (if any);
- (c) if no representative is named under sub-paragraph (b), the applicant’s address for service in the United Kingdom (if different from the address notified under sub-paragraph (a));
- (d) that the notice is a reference notice; and
- (e) the issues concerning the Authority notice that the applicant wishes the Tribunal to consider.

(4) In sub-paragraph (3)(a), “address”, where the applicant is a corporation, means the address of the applicant’s registered or principal office.

(5) The applicant shall file with the reference notice a copy of any Authority notice to which the reference relates.

(6) The applicant may include with the reference notice an application for directions, such as a direction extending any time limit for making a reference, a direction under rule 10(1)(e) (suspension of Authority’s action) or a direction under rule 10(1)(p) (that the register shall include no particulars about the reference).

(7) At the same time as he files the reference notice, the applicant shall send a copy of that notice (and of any application for directions in accordance with paragraph (6)) to the Authority.

(8) In all cases where an application for directions is made under paragraph (6) the Secretary shall refer the application for directions to the Tribunal for determination and he shall take no further action in relation to the reference notice until the application for directions has been determined.

(9) Subject to paragraph (8) and to any directions given by the Tribunal, upon receiving a reference notice the Secretary shall—

- (a) enter particulars of the reference in the register; and
- (b) inform the parties in writing of—
 - (i) the fact that the reference has been received;
 - (ii) the date when the Tribunal received the notice; and
 - (iii) the Tribunal’s decision on any application made for directions (and include a copy of any direction given),

and the Secretary when sending the parties this information shall specify the date on which he is sending it.

Authority’s statement of case

5.—(1) The Authority shall file a written statement (“a statement of case”) in support of the referred action so that it is received by the Tribunal no later than 28 days after the day on which the Authority received the information sent by the Secretary in accordance with rule 4(9)(b).

(2) The statement of case shall—

- (a) specify the statutory provisions providing for the referred action;
- (b) specify the reasons for the referred action;

- (c) set out all the matters and facts upon which the Authority relies to support the referred action; and
 - (d) specify the date on which the statement of case is filed.
- (3) The statement of case shall be accompanied by a list of—
- (a) the documents on which the Authority relies in support of the referred action; and
 - (b) the further material which in the opinion of the Authority might undermine the decision to take that action.
- (4) At the same time as it files the statement of case, the Authority shall send to the applicant a copy of the statement of case and of the list referred to in paragraph (3).

Applicant's reply

- 6.—(1) The applicant shall file a written reply so that it is received by the Tribunal no later than 28 days after—
- (a) the date on which the applicant received a copy of the statement of case; or
 - (b) if the Authority amends its statement of case, the date on which the applicant received a copy of the amended statement of case.
- (2) The reply shall—
- (a) state the grounds on which the applicant relies in the reference;
 - (b) identify all matters contained in the statement of case which are disputed by the applicant;
 - (c) state the applicant's reasons for disputing them; and
 - (d) specify the date on which it is filed.
- (3) The reply shall be accompanied by a list of all the documents on which the applicant relies in support of his case.
- (4) At the same time as he files the reply, the applicant shall send to the Authority a copy of the reply and of the list referred to in paragraph (3).

Secondary disclosure by the Authority

- 7.—(1) Following the filing of the applicant's reply, if there is any further material which might be reasonably expected to assist the applicant's case as disclosed by the applicant's reply and which is not mentioned in the list provided in accordance with rule 5(3), the Authority shall file a list of such further material.
- (2) Any list required to be filed by paragraph (1) shall be filed so that it is received no later than 14 days after the day on which the Authority received the applicant's reply.
- (3) At the same time as it files any list required by paragraph (1) the Authority shall send a copy to the applicant.

Exceptions to disclosure

- 8.—(1) A list provided in accordance with rule 5(3) or 7(1) need not include any document that relates to a case involving a person other than the applicant which was taken into account by the Authority in the applicant's case only for the purposes of comparison with other cases.
- (2) A list provided in accordance with rule 5(3), 6(3) or 7(1) need not include any document that is material the disclosure of which for the purposes of or in connection with any legal proceedings is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000(a).
- (3) A list provided in accordance with rule 5(3), 6(3) or 7(1) need not include any document in respect of which an application has been or is being made under paragraph (4).
- (4) A party may apply to the Tribunal (without giving notice to the other party) for a direction authorising that party not to include in the list required by rule 5(3), 6(3) or 7(1) a document on the ground that disclosure of the document—
- (a) would not be in the public interest; or
 - (b) would not be fair, having regard to—

(a) 2000 c. 23.

- (i) the likely significance of the document to the applicant in relation to the matter referred to the Tribunal; and
 - (ii) the potential prejudice to the commercial interests of a person other than the applicant which would be caused by disclosure of the document.
- (5) For the purpose of deciding an application by a party under paragraph (4), the Tribunal may—
- (a) require that the document be produced to the Tribunal together with a statement of the reasons why its inclusion in the list would—
 - (i) in the case of an application under paragraph (4)(a), not be in the public interest; or
 - (ii) in the case of an application under paragraph (4)(b), not be fair; and
 - (b) invite the other party to make representations.
- (6) If the Tribunal refuses an application under paragraph (4) for a direction authorising a party not to include a document in a list, it shall direct that party—
- (a) to revise the list so as to include the document; and
 - (b) to file a copy of that list as revised and send a copy to the other party.
- (7) A party who has filed a list under rule 5(3), 6(3) or 7(1) shall, upon the request of the other party, provide that other party with a copy of any document specified in the list or make any such document available to that party for inspection or copying.
- (8) Paragraph (7) does not apply to any document that is a protected item.

Directions

9.—(1) The Tribunal may at any time give directions to enable the parties to prepare for the hearing of the reference, to assist the Tribunal to determine the issues and generally to ensure the just, expeditious and economical determination of the reference.

(2) The Tribunal may give directions on the application of any party or of all the parties or of its own initiative and, where it gives a direction of its own initiative, it may (but need not) give prior notice to the parties of its intention to do so.

(3) Any application for directions shall include the reasons for making that application.

(4) Except where it is made during the pre-hearing review or during the hearing of the reference, an application for directions shall be filed and, unless the application is accompanied by the written consent of all the parties or an application without notice is permitted by these Rules, the party making the application shall at the same time send a copy to the other party.

(5) If any party objects to the directions applied for, the Tribunal shall consider the objection and, if it considers it necessary for the determination of the application, shall give the parties an opportunity to make representations.

(6) Directions may be given orally or in writing and, unless the Tribunal decides otherwise in any particular case, notice of any written direction (or refusal to give a direction) shall be given to the parties.

(7) Directions containing a requirement may specify a time limit for complying with the requirement and shall include a statement of the possible consequences of a party's failure to comply with the requirement.

(8) A person to whom a direction is given under these Rules may apply to the Tribunal showing good cause why it should be varied or set aside, but the Tribunal shall not grant such an application without first notifying any person who applied for the direction and giving that party an opportunity to make representations.

(9) The following paragraphs of this rule shall apply if the Chairman directs that it is appropriate to hold a pre-hearing review.

(10) The Secretary shall give the parties not less than 14 days' notice of the time and place of the pre-hearing review.

(11) At the pre-hearing review, which shall be held before the Chairman—

- (a) the Chairman shall give all directions appearing necessary or desirable for securing the just, expeditious and economical conduct of the reference; and

- (b) the Chairman shall endeavour to secure that the parties make all admissions and agreements as they ought reasonably to have made in relation to the proceedings.

(12) In this rule, “pre-hearing review” means a review of the reference that may be held at any time before the hearing of the reference.

Particular types of direction

10.—(1) Directions given by the Tribunal may—

- (a) fix the time and place of the hearing of the reference and alter any time and place so fixed;
- (b) provide for an oral hearing, upon such notice as the Tribunal may determine, in connection with any matter arising under the reference;
- (c) adjourn any oral hearing;
- (d) extend any time limit for making a reference under the Act or these Rules, or vary (whether by extending or shortening) any other time limit for anything to be done under these Rules;
- (e) suspend the effect of an Authority notice (or prevent it taking effect) until the reference has been finally disposed of, or until any appeal against the Tribunal’s determination of the reference has been finally disposed of, or both;
- (f) permit or require any party to provide further information or supplementary statements or to amend a response document or a supplementary statement;
- (g) require any party to file any document—
 - (i) that is in the custody or under the control of that party;
 - (ii) that the Tribunal considers is or may be relevant to the determination of the reference; and
 - (iii) that has neither been exempted from disclosure by direction given pursuant to rule 8(4) nor been made available pursuant to rule 8(7),and may also require that any such document directed for filing as above shall be copied to the other party or else be made available to that other party for inspection and copying;
- (h) require any party to provide a statement of relevant issues and facts, identifying those which are, and are not, agreed by the other party;
- (j) require any party to file documents for any hearing under these Rules or to agree with the other party the documents to be filed;
- (k) require any party to file—
 - (i) a list of the witnesses whom the party wishes to call to give evidence at the hearing of the reference; and
 - (ii) statements of the evidence which those witnesses intend to give, if called;
- (l) make provision as to any expert witnesses to be called including the number of such witnesses and the evidence to be given by them;
- (m) provide for the appointment of any expert under paragraph 7(4) of Schedule 13 and for that expert to send the parties copies of any report that he produces;
- (n) provide for the manner in which any evidence may be given;
- (o) provide for the use of languages in addition to English, including provision—
 - (i) as to the venue of any hearing under these Rules so as to ensure the availability of simultaneous translation facilities; and
 - (ii) for the translation of any document;
- (p) require that the register shall include no particulars about the reference; and
- (q) where two or more reference notices have been filed—
 - (i) in respect of the same matter;
 - (ii) in respect of separate interests in the same subject in dispute; or
 - (iii) which involve the same issues,provide that the references or any particular issue or matter raised in the references be consolidated or heard together.

(2) In the case of an application for a direction under paragraph (1)(d) extending any time limit, the Tribunal may direct that the time limit be extended (whether or not it has already expired) if it is satisfied that to do so would be in the interests of justice but, in the case of an application for a direction extending any time limit for making a reference, the Tribunal shall not determine the application without—

- (a) considering whether the Authority notice was such as to notify the applicant properly and effectively of the referred action; and
- (b) considering whether the existence of the right to make the reference and the time limit had been notified to the applicant, whether in the Authority notice or otherwise.

(3) A time limit extended under paragraph (2) may from time to time be further extended by directions of the Tribunal (whether or not that or any subsequent such time limit has already expired) made upon an application under paragraph (1)(d), but no such direction shall be given unless the Tribunal is satisfied that the further extension would be in the interests of justice.

(4) Where a party files a response document or list later than any time limit imposed by or extended under these Rules but without applying for a direction under paragraph (1)(d) extending the time limit, that party shall be treated as applying for such a direction but no such direction shall be given unless the Tribunal is satisfied that such an extension would be in the interests of justice.

(5) If a response document or list is not filed in accordance with the time limit imposed by (or extended under) these Rules, the Tribunal may of its own initiative direct that the document or list be filed by a specified date.

(6) Where an application for a direction is made under paragraph (1)(e), the Tribunal may give such a direction only if it is satisfied that to do so would not prejudice—

- (a) the interests of any persons (whether consumers, investors or otherwise) intended to be protected by the Authority notice; or
- (b) the smooth operation or integrity of any market intended to be protected by that notice.

(7) If the Tribunal gives a direction under paragraph (1)(f) to permit or require a party to provide a supplementary statement or to amend a response document or supplementary statement, the direction may require that party to file any such statement or amendment and send a copy to the other party.

(8) The Tribunal shall not give a direction under paragraph (1)(g) or (1)(j) in relation to the disclosure of any document to the extent that the Tribunal is satisfied that—

- (a) it is a protected item or would be included in an exemption provided by rule 8(1) or (2); or
- (b) it should not be disclosed on one of the grounds specified in rule 8(4),

and, for the purpose of determining whether such a direction should be given in respect of any such document, the Tribunal may—

- (i) require that the document be produced to the Tribunal;
- (ii) hear the application in the absence of any party; and
- (iii) invite any party to make representations.

(9) In the case of an application for a direction under paragraph (1)(p) that the register should include no particulars about the reference, the Tribunal may give such a direction if it is satisfied that this is necessary, having regard to—

- (a) the interests of morals, public order, national security or the protection of the private lives of the parties; or
- (b) any unfairness to the applicant or prejudice to the interests of consumers that might result from the register including particulars about the reference.

Filing of subsequent notices in relation to the referred action

11. Where, after the filing of a reference notice, the Authority gives the applicant any notice under the Act in relation to the referred action, the Authority shall without delay file a copy of that notice.

Summoning of witnesses

- 12.**—(1) The Tribunal may by summons require any person to—
- (a) attend, at such time and place as is specified in the summons, to give evidence as a witness;
 - (b) file, within the time specified in the summons, any document in his custody or under his control which the Tribunal considers it necessary to examine; or
 - (c) both attend and file in accordance with sub-paragraphs (a) and (b) above.
- (2) No person may be required under this rule to file a document to the extent that the Tribunal is satisfied that—
- (a) it is a protected item or would be included in an exemption provided by rule 8(1) or (2); or
 - (b) it should not be disclosed on one of the grounds specified in rule 8(4),
- and, for the purpose of satisfying itself in respect of any such document, the Tribunal may—
- (i) require that the document be produced to the Tribunal;
 - (ii) conduct any hearing in the absence of any party; and
 - (iii) invite any party to make representations.
- (3) A witness summons shall be sent so as to be received by the person to whom it is addressed not less than seven days before the time specified in the summons.
- (4) Every summons under paragraph (1) shall contain a statement warning of the effect of paragraph 11(3) to (5) of Schedule 13 (penalty for refusal or failure to attend or give evidence).
- (5) No person shall be required, in obedience to a summons under paragraph (1), to travel more than 16 kilometres from his place of residence unless the necessary expenses of his attendance are paid or tendered to him in advance, and when the summons is issued at the request of a party, those expenses shall be paid by that party.
- (6) The Tribunal may, upon the application of the person to whom the witness summons is addressed, direct that the witness summons be set aside or varied.

Preliminary hearing

- 13.**—(1) The Tribunal may direct that any question of fact or law which appears to be in issue in relation to the reference be determined at a preliminary hearing.
- (2) If, in the opinion of the Tribunal, the determination of that question substantially disposes of the reference, the Tribunal may treat the preliminary hearing as the hearing of the reference and may make such order by way of disposing of the reference as it thinks fit.
- (3) If the parties so agree in writing, the Tribunal may determine the question without an oral hearing, but, in any such case, the Tribunal may not at the same time dispose of the reference unless the parties have agreed in writing that it may do so.

Withdrawal of reference and unopposed references

- 14.**—(1) The applicant may withdraw the reference—
- (a) at any time before the hearing of the reference, without permission, by filing a notice to that effect; or
 - (b) at the hearing of the reference, with the Tribunal's permission,
- and the Tribunal may determine any reference that is so withdrawn.
- (2) The Authority may state that it does not oppose the reference or that it is withdrawing its opposition to it—
- (a) at any time before the hearing of the reference, without permission, by filing a notice to that effect; or
 - (b) at the hearing of the reference, with the Tribunal's permission.
- (3) In any case where—
- (a) the Authority makes a statement within paragraph (2)(a);
 - (b) the Authority does not file a statement of case within the time limit imposed by rule 5(1) (or any such time limit as extended under rule 10(1)(d)); or

(c) the applicant does not file a reply within any time limit imposed by rule 6(1) (or any such time limit as extended under rule 10(1)(d)),
the Tribunal may (subject to its power to give a direction pursuant to rule 10(5)) determine the reference without an oral hearing in accordance with rule 16, but it shall not dismiss a reference without notifying the applicant that it is minded to do so and giving him an opportunity to make representations.

(4) When determining proceedings pursuant to paragraph (1) or (3), the Tribunal may make a costs order under rule 21.

References by third parties

15.—(1) In the case of any reference made by an applicant under section 393 (third party rights) these Rules apply subject to the modifications set out in this rule.

(2) The following definitions apply in place of the definitions of “Authority notice” and “referred action” given in rule 2(1)—

(a) if the reference was made under section 393(9) (reference to the Tribunal by a third party to whom a decision notice was copied), “Authority notice” means the decision notice which was copied to the applicant by the Authority;

(b) if the reference was made under section 393(11) (reference to the Tribunal by a third party who alleges that he was not given a copy of a decision notice), “Authority notice” means the decision notice which the applicant alleges was not copied to him; and

(c) in either case, “referred action” means the action set out in the Authority notice.

(3) If the reference was made under section 393(11), rule 4(5) (requirement on applicant to file a copy of the Authority notice) does not apply.

(4) The duties of the Authority to set out information under rule 5(2) (statement of case) or to list material under rule 5(3) or 7(1) (lists of documents and further material) apply only to information, documents or material which relate to the matters referred to the Tribunal in accordance with section 393(9) or (as the case may be) section 393(11).

PART III

HEARINGS

Determination without oral hearing

16.—(1) The Tribunal may determine a reference, or any particular issue, without an oral hearing if—

(a) the parties agree in writing;

(b) the issue concerns an application for directions; or

(c) rule 14(3) applies.

(2) Where a reference or an issue is determined in accordance with this rule, the Tribunal shall consider whether there are circumstances making it undesirable to make a public pronouncement of the whole or part of its decision and may in consequence take any steps, including any one or more of the steps specified in paragraph (3), but any such step shall be taken with a view to ensuring the minimum restriction on public pronouncement that is consistent with the need for the restriction.

(3) The steps referred to in paragraph (2) are—

(a) anonymising the decision;

(b) editing the text of the decision;

(c) declining to publish the whole or part of the decision.

(4) Before reaching a decision under paragraph (2), the Tribunal shall invite the parties to make representations on the matter.

Hearings in public

17.—(1) In this rule, “hearing” means any hearing under these Rules but does not include any determination under rule 16(1) or the hearing of any application made to the Tribunal without notice to the other party.

(2) Subject to the following paragraphs of this rule, all hearings shall be in public.

(3) The Tribunal may direct that all or part of a hearing shall be in private—

(a) upon the application of all the parties; or

(b) upon the application of any party, if the Tribunal is satisfied that a hearing in private is necessary, having regard to—

(i) the interests of morals, public order, national security or the protection of the private lives of the parties; or

(ii) any unfairness to the applicant or prejudice to the interests of consumers that might result from a hearing in public,

if, in either case, the Tribunal is satisfied that a hearing in private would not prejudice the interests of justice.

(4) Before determining an application under paragraph (3)(b), the Tribunal shall give the other party an opportunity to make representations.

(5) Before giving a direction under paragraph (3) that the entire hearing should be in private, the Tribunal shall consider whether only part of the hearing should be heard in private.

(6) The following persons shall be entitled to attend any hearing of the Tribunal whether or not it is in private—

(a) the parties and their representatives;

(b) the President or any member of the panel of chairmen or of the lay panel notwithstanding that they are not members of the Tribunal for the purpose of the reference to which the hearing relates;

(c) the Secretary and any member of the Tribunal’s staff appointed under paragraph 6 of Schedule 13; and

(d) a member of the Council on Tribunals or the Scottish Committee of that Council.

(7) The Tribunal may permit any other person to attend a hearing which is held in private.

(8) The persons mentioned in paragraph (6)(b) and (d) shall be entitled to attend the deliberations of the Tribunal but shall take no part in those deliberations.

(9) The Tribunal may exclude from the whole or part of a hearing any person whose conduct, in the opinion of the Tribunal, has disrupted or is likely to disrupt the hearing.

(10) Subject to any direction under paragraph (11), the Secretary shall provide for the public inspection at the Tribunal’s offices of a daily list of all hearings which are to be held together with information about the time and place fixed for the hearings.

(11) Where all or part of a hearing is held or is to be held in private, the Tribunal may direct that information about the whole or part of the proceedings before the Tribunal (including information that might help to identify any person) shall not be made public, and such a direction may provide for the information (if any) that is to be entered in the register or removed from it.

Representation at hearings

18.—(1) Subject to paragraph (2), the parties may appear at the hearing (with assistance from any person if desired), and may be represented by any person, whether or not that person is legally qualified.

(2) If in any particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a person to assist or represent a party at the hearing.

(3) In this rule, “hearing” means any hearing under these Rules.

Procedure at hearings

19.—(1) Subject to the Act and these Rules, the Tribunal shall conduct all hearings under these Rules in such manner as it considers most suitable to the clarification of the issues before it and generally to the just, expeditious and economical determination of the proceedings.

- (2) Subject to any directions by the Tribunal, the parties shall be entitled—
- (a) to give evidence (and, with the consent of the Tribunal, to bring expert evidence);
 - (b) to call witnesses;
 - (c) to question any witnesses; and
 - (d) to address the Tribunal on the evidence, and generally on the subject matter of the reference.

(3) Evidence may be admitted by the Tribunal whether or not it would be admissible in a court of law and whether or not it was available to the Authority when taking the referred action.

(4) If a party fails to attend or be represented at any hearing of which it has been duly notified, the Tribunal may, if it is satisfied that there is no good and sufficient reason for the absence—

- (a) in the case of the hearing of the reference, hear and determine the reference in the party's absence; or
- (b) in the case of any other hearing, give any direction, determine any issue or adjourn the hearing.

Decisions of Tribunal

20.—(1) Subject to paragraph (2) and to rule 16(2), the Tribunal shall make arrangements for the public pronouncement of its decisions, whether by giving its decisions orally in open court or by publishing its decisions in writing.

(2) Where the whole or any part of any hearing under these Rules was in private, the Tribunal shall consider whether, having regard to—

- (a) the reason for the hearing or any part of it being in private; and
- (b) the outcome of the hearing,

it would be undesirable to make a public pronouncement of the whole or part of its decision and may in consequence take any steps, including one or more of the steps specified in paragraph (3), but any such step shall be taken with a view to ensuring the minimum restriction on public pronouncement that is consistent with the need for the restriction.

- (3) The steps referred to in paragraph (2) are—
- (b) anonymising the decision;
 - (b) editing the text of the decision;
 - (c) declining to publish the whole or part of the decision.

(4) Before reaching a decision under paragraph (2), the Tribunal shall invite the parties to make representations on the matter.

(5) The Secretary shall as soon as may be practicable enter every decision (and the reasons for the decision) in the register, but this is subject to any steps taken under paragraph (2) or under rule 16(2) and to any direction given under rule 17(11).

(6) Every notification of a decision determining a reference which is sent to the parties shall be accompanied by a notification of any provision of the Act relating to appeals from the Tribunal and of the time within which and the place at which such appeal or application for permission to appeal may be made.

Costs

21.—(1) In this rule, “costs order” means an order under paragraph 13 of Schedule 13 (power of Tribunal to order payment of costs) that a party pay the whole or part of the costs or expenses incurred by another party, and “the paying party” and “the receiving party” mean, respectively, the parties against whom and in whose favour the Tribunal makes, or (as the case may be) considers making a costs order.

(2) The Tribunal shall not make a costs order without first giving the paying party an opportunity to make representations against the making of the order.

(3) Where the Tribunal makes a cost order it may order—

- (a) that an amount fixed by the Tribunal shall be paid to the receiving party by way of costs or (as the case may be) expenses; or
- (b) that the costs shall be assessed or (as the case may be) expenses shall be taxed on such basis as it shall specify—
 - (i) in England and Wales, by a costs official;
 - (ii) in Scotland, by the Auditor of the Court of Session;
 - (iii) in Northern Ireland, by the Taxing Master of the Supreme Court of Northern Ireland.

Review of Tribunal’s decision

22.—(1) If, on the application of a party or of its own initiative, the Tribunal is satisfied that—

- (a) its decision determining a reference was wrongly made as a result of an error on the part of the Tribunal staff; or
- (b) new evidence has become available since the conclusion of the hearing to which that decision relates, the existence of which could not have been reasonably known of or foreseen,

the Tribunal may review and, by certificate signed by the Chairman, set aside the relevant decision.

(2) An application for the purposes of paragraph (1) may either be made immediately following the decision at the hearing of the reference or shall be filed (stating the grounds in full) not later than 14 days after the date on which notification of the decision was sent to the parties.

(3) Where the Tribunal proposes to review its decision of its own initiative, it shall notify the parties of that proposal not later than 14 days after the date on which the decision was sent to the parties.

(4) The parties shall have an opportunity to make representations on any application or proposal for review under this rule and the review shall be determined either by the same members of the Tribunal who decided the case or by a differently constituted Tribunal appointed by the President.

(5) If, having reviewed the decision, the decision is set aside, the Tribunal shall substitute such decision as it thinks fit or order a re-hearing before either the same or a differently constituted Tribunal.

(6) The certificate of the Chairman as to the setting aside of the Tribunal’s decision under this rule shall be sent to the Secretary who shall immediately make such correction as may be necessary in the register and shall send a copy of the entry so corrected to each party.

PART IV

APPEALS FROM THE TRIBUNAL

Application for permission to appeal

23.—(1) In this Part, “appeal” means appeal (or an appeal) under section 137(1) to the Court of Appeal or the Court of Session from a decision of the Tribunal disposing of a reference, and “appellant” means a party applying for permission to appeal.

- (2) An application to the Tribunal for permission to appeal may be made—
 - (a) orally at the hearing after the decision is announced by the Tribunal; or
 - (b) by way of written application filed not later than 14 days after the decision is sent to the party making the application.
- (3) When an application is made under paragraph (2)(b), it shall be signed by the appellant and shall—
 - (a) state the name and address of the appellant and any representative of the appellant;
 - (b) identify the decision of the Tribunal to which the application relates; and
 - (c) state the grounds on which the appellant intends to rely in the appeal.
- (4) An application under this rule may include an application for a direction under rule 10(1)(e) (suspension of Authority’s action).

Decision as to permission to appeal

- 24.**—(1) An application to the Tribunal for permission to appeal may be decided by the Chairman, on consideration of the application.
- (2) Unless the decision is made immediately following an oral application or the Chairman considers that special circumstances render a hearing desirable, the application for permission to appeal shall be decided without an oral hearing.
 - (3) The decision of the Tribunal on an application for permission to appeal, together with the reasons for its decision, shall be recorded in writing.
 - (4) Unless the decision is given immediately following an oral application, the Secretary shall notify the appellant and each of the other parties of the decision and the reasons for the decision.
 - (5) Where the Tribunal refuses the application, it shall issue a direction that the appellant, if he wishes to seek permission from the Court of Appeal or the Court of Session to appeal, must do so within 14 days of the Tribunal’s refusal.

Reference remitted for rehearing

- 25.**—(1) The following paragraphs of this rule apply where the Court of Appeal or the Court of Session remits a reference to the Tribunal under section 137(3)(a) for rehearing and determination (“rehearing”).
- (2) These Rules, so far as relevant, shall apply to the rehearing as they did to the original hearing of the reference.
 - (3) The Tribunal shall, within 28 days of the remittal, give directions in relation to the rehearing.

PART V
GENERAL

Miscellaneous powers of Tribunal

- 26.**—(1) Any functions of the Secretary may be performed by an Assistant Secretary to the Tribunal or by some other member of the Tribunal staff authorised for the purpose by the Secretary.
- (2) Subject to the provisions of the Act and these Rules, the Tribunal may regulate its own procedure.
 - (3) Without limiting any other powers conferred on it by the Act or by these Rules, the Tribunal may, if it thinks fit—
 - (a) order any response document, supplementary statement or written representation to be struck out at any stage of the proceedings on the ground that it is scandalous, frivolous or vexatious; or
 - (b) order any reference to be struck out for want of prosecution.

(4) Before making any order under paragraph (3), the Tribunal shall give notice to the party against whom it is proposed that the order should be made, giving it an opportunity to make representations against the making of the order.

Failure to comply

27.—(1) Where a party has, without reasonable excuse, failed to comply—

- (a) with a direction given under these Rules; or
- (b) with a provision of these Rules,

the Tribunal may take any one or more of the following steps in respect of that party—

- (i) make a costs order under rule 21 against that party;
- (ii) where that party is the applicant, dismiss the whole or part of the reference (or, if there is more than one applicant, that applicant's reference);
- (iii) where that party is the Authority, strike out the whole or part of the statement of case and, where appropriate, direct that the Authority be debarred from contesting the reference altogether.

(2) The Tribunal shall not take any of these steps in respect of a party unless it has given that party notice giving it an opportunity to make representations against the taking of any such steps.

Irregularities

28.—(1) Any irregularity resulting from failure to comply with any provision of these Rules or of any direction of the Tribunal before the Tribunal has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the Tribunal, the Tribunal may, and shall if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks just to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a direction or decision of the Chairman or the Tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by a certificate signed by the Chairman.

Power of Chairman to exercise powers of Tribunal

29. Any matter (other than the determination of a reference or the setting aside of a decision on a reference) required or authorised by these Rules to be done by the Tribunal may be done by the Chairman.

Proof of documents

30.—(1) Any document purporting to be a document duly executed or issued by the Chairman or the Secretary on behalf of the Tribunal shall, unless proved to the contrary, be deemed to be a document so executed or issued.

(2) A document purporting to be certified by the Secretary to be a true copy of any entry of a decision in the register shall, unless proved to the contrary, be sufficient evidence of the entry and of the matters referred to in it.

Sending notices

31.—(1) This rule applies to any notice sent under these Rules, and in this rule—

- “send” to a person includes deliver or give to, or serve on, that person;
- “notice” includes any notice or other thing required or authorised by these Rules to be sent or delivered to, or served on, any person; and
- “recipient” means a person to or on whom any notice is required or authorised to be sent for the purposes of these Rules.

(2) A notice may be sent—

- (a) by a postal service which seeks to deliver documents or other things by post no later than the next working day in all or in the majority of cases;
- (b) by fax or other means of electronic communication; or

- (c) by personal delivery.
- (3) A notice shall be sent—
 - (a) in the case of a notice directed to the Tribunal, to the Tribunal’s office;
 - (b) in the case of a notice directed to the applicant—
 - (i) to his representative; or
 - (ii) (in any case where there is no representative) to the applicant,at the appropriate address notified to the Tribunal in accordance with rule 4(3);
 - (c) in the case of a notice directed to the Authority, to the Authority’s head office; or
 - (d) otherwise, to the recipient’s registered office or last known address.
- (4) Subject to paragraphs (5) and (6), a notice that is sent shall be deemed, unless the contrary is proved, to have been received—
 - (a) where it was sent by post, on the second day after it was sent; and
 - (b) in any other case, on the day it was sent.
- (5) Where a notice is sent by post to the Tribunal, it shall be deemed to have been received on the day it was actually received by the Tribunal.
- (6) No notice shall be deemed to have been received if it is not received in legible form (or, in the case of a document received in electronic form, if the recipient is not readily able to elicit the information in legible form).
- (7) Where the time prescribed by these Rules for doing any act expires on a Saturday, Sunday, Christmas Day, Good Friday or bank holiday, the act shall be in time if done on the next following working day.
- (8) Paragraph (9) applies where—
 - (a) a recipient cannot be found;
 - (b) a recipient has died and has no known personal representative;
 - (c) a recipient has no address for service in the United Kingdom; or
 - (d) for any other reason service on a recipient cannot be readily effected.
- (9) Where this paragraph applies the Chairman may dispense with service on the recipient or may make an order for alternative service on such other person or in such other form (whether by advertisement in a newspaper or otherwise) as the Chairman may think fit.
- (10) In this rule, “bank holiday” means a day that is specified in, or appointed under, the Banking and Financial Dealings Act 1971(a).

Signed by the authority of the Lord Chancellor

9th July 2001

Rosie Winterton
Parliamentary Secretary,
Lord Chancellor’s Department

(a) 1971 c. 80.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules regulate the procedure for references to the Financial Services and Markets Tribunal (“the Tribunal”), established under section 132 of the Financial Services and Markets Act 2000 (“the 2000 Act”), an Act passed to provide for the regulation of financial services and markets. They provide, in particular, for—

- (i) the making of a reference by the applicant filing a reference notice with the Tribunal (*rule 4*). The applicant has 28 days to make the reference, beginning with the date on which a notice is given by the Financial Services Authority;
- (ii) the filing, by the Financial Services Authority, of a statement of case (*rule 5*);
- (iii) the filing, by the applicant, of a reply (*rule 6*);
- (iv) direction-making powers for the Tribunal (*rules 9 and 10*);
- (v) power to summon witnesses (*rule 12*);
- (vi) references by third parties (*rule 15*);
- (vii) hearings by the Tribunal (*rules 16 to 19*);
- (viii) the publication of the Tribunal’s decision (*rule 20*);
- (ix) the awarding of costs (*rule 21*); and
- (x) appeals from the Tribunal’s decision (*rules 23 to 25*).

The jurisdiction of the Tribunal extends to the whole of the United Kingdom.

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TRIBUNALS**

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