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STATUTORY INSTRUMENTS

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**2001 No. 3083**

**The Financial Services and Markets Act 2000  
(Transitional Provisions and Savings) (Civil Remedies,  
Discipline, Criminal Offences etc.) (No. 2) Order 2001**

**PART 3**

**DISCIPLINARY POWERS**

**Public statements in respect of pre-commencement contraventions of the Financial Services Act**

6.—(1) Paragraph (3) applies if—

- (a) the Authority considers that an authorised person before commencement contravened a pre-commencement provision that related to him; and
- (b) the Authority has not given a written notice under section 60(2) of the Financial Services Act in respect of that contravention.

(2) Paragraph (3) also applies if—

- (a) the Authority considers that an authorised person before commencement contravened a pre-commencement friendly societies provision that related to him;
- (b) that person was, immediately before commencement, a regulated friendly society other than a member society; and
- (c) the Authority has not given a written notice under paragraph 21 of Schedule 11 to the Financial Services Act<sup>(1)</sup> in respect of that contravention.

(3) The Authority may exercise the power conferred by section 205 (public censure) as if the contravention of the pre-commencement provision or pre-commencement friendly societies provision were a contravention of a requirement imposed by or under the Act.

(4) “Pre-commencement provision”, in relation to an authorised person (“A”), means—

- (a) if immediately before commencement A was a regulated person—
  - (i) any rule or regulation made under Chapter V of Part I of the Financial Services Act;
  - (ii) section 56 or 59 of that Act; or
  - (iii) any condition imposed under section 50 of that Act;
- (b) any prohibition or requirement imposed under Chapter VI of Part I of that Act (powers of intervention) to which A was subject;
- (c) any statement of principle issued under section 47A of that Act (statements of principle)<sup>(2)</sup> to which A was subject;

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<sup>(1)</sup> Functions transferred by S.I. 1987/925.

<sup>(2)</sup> Inserted by the Companies Act 1989 (c. 40) section 192 and amended by S.I. 1996/2827 and S.I. 1997/251. Modified by S.I. 1992/3218 and S.I. 1995/3275. Functions transferred by S.I. 1990/354.

- (d) any requirement imposed under section 104(1) of that Act<sup>(3)</sup> (power to call for information) to which A was subject;
  - (e) a notice issued to A under section 183 of that Act<sup>(4)</sup> (reciprocal facilities for financial business) which is a partial restriction notice within the meaning of section 184(4) of that Act;
  - (f) if immediately before commencement A was a manager or trustee (within the meaning of that Act) of an authorised unit trust scheme (within the meaning of that Act), any direction given to an authorised unit trust scheme under section 91 of that Act (directions to authorised unit trust schemes); or
  - (g) any direction under regulation 18 of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 to which A was subject.
- (5) “Pre-commencement friendly societies provision” means
- (a) any rule or regulation made under Schedule 11 to the Financial Services Act;
  - (b) section 56 or 59 of that Act;
  - (c) any condition imposed under section 50 of that Act as it applied by virtue of paragraph 14(3) of Schedule 11 to that Act;
  - (d) any prohibition or requirement imposed under Chapter VI of Part I of that Act as it applied by virtue of paragraph 23 of that Schedule; or
  - (e) any requirement imposed under paragraph 24 of that Schedule.
- (6) For the purposes of paragraph (2)(b), “regulated friendly society” and “member society” have the meanings given by Schedule 11 to the Financial Services Act.
- (7) For the purposes of paragraph (4)(a), “regulated person” means any of—
- (a) an authorised person under the Financial Services Act by virtue of—
    - (i) section 22 (authorised insurers)<sup>(5)</sup>;
    - (ii) section 24 (operators and trustees of recognised schemes);
    - (iii) section 25 (authorisation by the Authority)<sup>(6)</sup>; or
    - (iv) section 31 (authorisation in other member State)<sup>(7)</sup>;
  - (b) a European institution carrying on home-regulated investment business in the United Kingdom, within the meaning of the 2BCD Regulations; or
  - (c) a European investment firm carrying on home-regulated investment business in the United Kingdom, within the meaning of the ISD Regulations.

### **Public statements in respect of pre-commencement contraventions of the rules of self-regulating organisations**

7.—(1) Paragraph (2) applies if—

- (a) an authorised person (within the meaning of the Act) was, immediately before commencement, a member of a recognised self-regulating organisation or a recognised self-regulating organisation for friendly societies;
- (b) the Authority considers that before commencement—

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(3) Amended by S.I. 1996/2827 and modified by S.I. 1992/3218, S.I. 1994/1696 and S.I. 1995/3275. Functions transferred by S.I. 1987/942.

(4) Modified by S.I. 1992/3218 and S.I. 1995/3275. Functions transferred by S.I. 1997/2781.

(5) Modified by S.I. 1994/1696.

(6) Functions transferred by S.I. 1987/942.

(7) Modified by S.I. 1992/3218 and S.I. 1995/3275.

- (i) he failed to comply with any of the provisions specified in rule 1.3.1(6) of the PIA rules (cases in which a member is liable to disciplinary action);
  - (ii) he committed an act of misconduct within the meaning of rule 7.23A(3) of the SFA rules; or
  - (iii) he committed a relevant IMRO contravention;
- (c) that organisation had, immediately before commencement, a power to publish statements corresponding to the power of the Authority under section 205 (public censure) in relation to that failure, misconduct or contravention, but had not exercised that power.

(2) The Authority may exercise the power conferred by section 205 in relation to the conduct specified by paragraph (1)(b) as if the authorised person concerned had contravened a requirement imposed by or under the Act.

(3) In exercising, or deciding whether to exercise, its powers under section 205 in relation to any conduct of the kind specified by paragraph (1)(b), the Authority must have regard to any statement made by the relevant recognised self-regulating organisation or recognised self-regulating organisation for friendly societies which was in force when the conduct in question took place with respect to its policy on the taking of disciplinary action and the imposition of penalties (whether issued as guidance, contained in the rules of that organisation or otherwise).

#### **Imposition of penalties in respect of pre-commencement contraventions of the rules of self-regulating organisations**

8.—(1) Paragraph (2) applies if—

- (a) an authorised person (within the meaning of the Act) was, immediately before commencement, a member of a recognised self-regulating organisation or a recognised self-regulating organisation for friendly societies;
- (b) the Authority considers that before commencement—
  - (i) he failed to comply with any of the provisions specified in rule 1.3.1(6) of the PIA rules (cases in which a member is liable to disciplinary action);
  - (ii) he committed an act of misconduct within the meaning of rule 7.23A(3) of the SFA rules; or
  - (iii) he committed a relevant IMRO contravention;
- (c) that organisation had, immediately before commencement, a power to impose a penalty corresponding to the power of the Authority under section 206 (financial penalties) in relation to that failure, misconduct or contravention, but had not exercised that power.

(2) The Authority may exercise the power conferred by section 206 in relation to the conduct specified by paragraph (1)(b) as if the authorised person concerned had contravened a requirement imposed by or under the Act.

(3) The Authority may not, in relation to any conduct of the kind specified by paragraph (1)(b), impose under section 206 a penalty that exceeds the penalty which the relevant recognised self-regulating organisations or recognised self-regulating organisation for friendly societies could have imposed in relation to that conduct immediately before commencement.

(4) In exercising, or deciding whether to exercise, its powers under section 206 in relation to any conduct of the kind specified by paragraph (1)(b), the Authority must have regard to any statement made by the relevant recognised self-regulating organisation or recognised self-regulating organisation for friendly societies which was in force when the conduct in question took place with respect to its policy on the taking of disciplinary action and the imposition of, and amount of, penalties (whether issued as guidance, contained in the rules of that organisation or otherwise).

## **Disciplinary powers in relation to persons registered with self-regulating organisations**

9.—(1) Paragraph (3) applies where—

- (a) a person was, immediately before commencement—
  - (i) a registered person or former registered person for the purposes of the SFA rules;
  - (ii) a registered individual for the purposes of Rule 1.2(2) to (4) of Chapter IV and Chapter VIII of the IMRO rules; or
  - (iii) a registered individual or former registered individual for the purposes of the PIA rules;
- (b) it appears to the Authority that that person, before commencement,
  - (i) failed to comply with rule 1.8.13(1) of the PIA rules (cases in which a member is liable to disciplinary action etc.),
  - (ii) committed an act of misconduct within the meaning of rule 7.23A(3) of the SFA rules, or
  - (iii) committed a relevant IMRO contravention,in the course of carrying on a relevant activity.

(2) In paragraph (1), “relevant activity” means

- (a) performing a function of the kind which, if performed immediately after commencement, would be a controlled function within the meaning of Part V;
- (b) doing any thing connected with the performance of such a function; or
- (c) doing any thing connected with the regulation of the performance of such a function (including things done before the function had been performed).

(3) The Authority may exercise the power conferred by subsection (3)(a) or (b) (as appropriate) of section 66 in relation to the conduct specified by paragraph (1)(b) as if the person were guilty of misconduct within the meaning of subsection (2) of that section, subject to the condition specified by paragraph (4).

(4) The condition specified by this paragraph is that where the person—

- (a) was, immediately before commencement—
  - (i) a former registered person, for the purposes of the SFA rules,
  - (ii) 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, or
  - (iii) a former registered individual for the purposes of the PIA rules,
- (b) is a person, other than a person of the kind specified by sub-paragraph (a), who was not, immediately after commencement, an approved person (within the meaning of section 64(13)), or
- (c) was, immediately after commencement, an approved person, but has ceased to be an approved person,

the Authority may not exercise the power conferred by section 66 in relation to any conduct specified by paragraph (1)(b) after the relevant period has expired.

(5) For the purposes of paragraph (4), the relevant period is the period in which the relevant recognised self-regulating organisation had, before commencement, power to impose such a measure after a person ceased to be a registered person or registered individual (as the case may be), running from—

- (a) in the case of a person specified by paragraph (4)(a), the time at which the person ceased to be a registered person or registered individual;
- (b) in the case of a person specified by paragraph (4)(b), commencement;
- (c) in the case of a person specified by paragraph (4)(c), the time at which the person ceased to be an approved person.

(6) For the purposes of section 66(4), if the Authority is proposing to take action under section 66 in relation to the conduct specified by paragraph (1)(b), the Authority is deemed to know of the misconduct on the first day on which the relevant recognised self-regulating organisation knew of the misconduct or had information from which the misconduct could reasonably have been inferred.

(7) The Authority may not, in relation to any conduct of the kind specified by paragraph (1)(b), impose under section 66 a penalty that exceeds the penalty which the relevant recognised self-regulating organisation could have imposed in relation to that conduct immediately before commencement.

(8) In exercising, or deciding whether to exercise, its powers under section 66 in relation to any conduct of the kind specified by paragraph (1)(b), the Authority must have regard to any statement made by the relevant recognised self-regulating organisation or recognised self-regulating organisation for friendly societies which was in force when the conduct in question took place with respect to its policy on the taking of disciplinary action and the imposition of, and amount of, penalties (whether issued as guidance, contained in the rules of that organisation or otherwise).