
STATUTORY INSTRUMENTS

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 I

INCOMPLETE DISCIPLINARY PROCEEDINGS

Interpretation

56.—(1) In this Part—

“IMRO” means the Investment Management Regulatory Organisation Limited and “IMRO rules” means the rules of IMRO;

“PIA” means the Personal Investment Authority Limited and “PIA rules” means the rules of the PIA;

“SFA” means The Securities and Futures Authority Limited and “SFA rules” means the rules of the SFA.

(2) For the purposes of this Part, “disciplinary proceedings” are proceedings brought—

- (a) by IMRO under Rules 4.6 and 5.1 of Chapter VIII of the IMRO rules;
- (b) by the PIA serving a notice of proposed order under rule 10.1.4(1) or (2) or issuing formal proceedings under rule 10.1.2(3) of the PIA rules;
- (c) by the SFA under Rule 7-23A or 7-24A of the SFA rules.

(3) For the purposes of this Part, a person is treated as being subject to incomplete disciplinary proceedings where—

- (a) disciplinary proceedings have been brought against him by a recognised self-regulating organisation in accordance with the rules of that organisation; and
- (b) he has not been informed, before commencement, whether or not the organisation has determined to impose on him a disciplinary measure within the meaning of article 76 in respect of the matters which were the subject of the proceedings,

and a person who was, immediately before commencement, subject to incomplete disciplinary proceedings is described as being “in discipline”.

(4) Disciplinary proceedings are to be treated as proceedings begun against the person who was subject to them for the purposes of section 66(4).

(5) In this Part, references to “the Civil Remedies Order” are to the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc.) Order (No. 2) 2001(1);

(6) In this Part—

- (a) “the relevant SRO” in relation to a person in discipline is whichever of IMRO, the PIA or the SFA commenced incomplete disciplinary proceedings against him; and
- (b) “the relevant SRO” in relation to incomplete disciplinary proceedings means whichever of IMRO, the PIA or the SFA is the organisation in accordance with the rules of which those proceedings were commenced.

Application of this Chapter

57. This Chapter applies only where the person in discipline is—

- (a) an authorised person (within the meaning of the Act) who was a member of IMRO, the PIA or the SFA immediately before commencement; or
- (b) a person 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.

Determination of incomplete disciplinary proceedings

58.—(1) Subject to article 64(2), the Authority may, before the end of the period of six months beginning at commencement, refer the incomplete disciplinary proceedings of a person in discipline to the interim tribunal established in accordance with Chapter IV of this Part.

(2) Where the Authority refers the incomplete disciplinary proceedings to the interim tribunal under paragraph (1), it must notify the person in discipline that it has done so and of the effect of this Order.

(3) The interim tribunal has jurisdiction to determine the incomplete disciplinary proceedings referred to it under paragraph (1) and must—

- (a) determine what (if any) is the appropriate action for the Authority to take against the person who was the subject of the incomplete disciplinary proceedings referred to it, in the exercise of the Authority’s powers under the Act; and
- (b) on determining the reference, remit the matter to the Authority with such directions (if any) as the interim tribunal considers appropriate for giving effect to its determination.

(4) The Authority must act in accordance with the determination of, and any direction given by, the interim tribunal.

Test to be applied by interim tribunal

59.—(1) Where the issues arising for determination in the incomplete disciplinary proceedings included the issue whether a person who was authorised under the Financial Services Act was a fit

and proper person, the interim tribunal must consider instead whether that person is failing or is likely to fail to satisfy the threshold conditions (within the meaning of section 41(1)).

(2) Where the issues arising for determination in the incomplete disciplinary proceedings included the issue whether a person was a fit and proper person to be employed in connection with investment business (within the meaning of the Financial Services Act) or investment business of a particular kind, the interim tribunal must consider instead whether that person is a fit and proper person to perform the functions in relation to the regulated activity corresponding to that investment business which he was performing before commencement.

Appropriate decisions on determination by interim tribunal

60.—(1) The interim tribunal must not direct the Authority to take action against the person in discipline if the rules of the relevant SRO in respect of that person did not confer a power to take similar action against him.

(2) The Authority must not, in giving effect to any direction of the interim tribunal, impose on a person in discipline a penalty under section 66(3)(a) or 206 that exceeds the penalty which the relevant SRO could have imposed in relation to that conduct at the conclusion of the incomplete disciplinary proceedings.

(3) The Authority must, in giving effect to any direction of the interim tribunal by imposing a penalty on a person in discipline under section 66(3)(a) or 206, have regard to any statement made by the relevant SRO which was in force when the conduct in question took place with respect to its policy on the imposition of and amount of penalties (whether issued as guidance, contained in the rules of that organisation or otherwise).

(4) The interim tribunal must not direct the Authority to exercise its powers under section 66 in respect of a person in discipline unless the Authority would have been able, by virtue of article 9(3) of the Civil Remedies Order, to exercise those powers against that person in respect of his failure, misconduct or other contravention in the absence of the incomplete disciplinary proceedings.

Decisions taken by the Authority giving effect to interim tribunal directions

61.—(1) Where the Authority implements a direction from the interim tribunal by exercising its power under section 45, sections 53, 54 and 55 do not apply to the exercise of that power.

(2) Where the Authority implements a direction from the interim tribunal by exercising its power under section 63(1), subsections (3) to (6) of that section do not apply to the exercise of that power.

(3) Where the Authority implements a direction from the interim tribunal by exercising its power under section 66(3), section 67 does not apply to the exercise of that power.

(4) Where the Authority implements a direction from the interim tribunal by exercising its power under section 196 or 200(1), section 197 and section 200(2) to (5) do not apply to the exercise of that power.

(5) Where the Authority implements a direction from the interim tribunal by exercising its power under section 205 or 206, sections 207 and 208 do not apply to the exercise of that power.

(6) Where the Authority implements a direction from the interim tribunal by exercising its power under section 384(5), sections 385 and 386 do not apply to the exercise of that power.

(7) Where the Authority implements a direction from the interim tribunal by exercising any of the powers mentioned in paragraphs (1) to (6), it must exercise that power by giving written notice to the person concerned and sections 390(3), (4), (5) and (7) to (9) and 391(4) apply to that notice as they apply to a final notice.

Appeal from determination of interim tribunal

62.—(1) Where a person in discipline or the Authority is aggrieved by the determination by the interim tribunal of the incomplete disciplinary proceedings to which that person was subject immediately before commencement, that person or the Authority may refer the matter to the Financial Services and Markets Tribunal.

(2) Section 133 applies to the Tribunal when it is considering a reference made under paragraph (1) with the following modifications—

- (a) as if subsection (3) provided that on such a reference, the Tribunal may consider only the evidence that was considered by the interim tribunal unless fresh evidence comes to light which could not reasonably have been made available to the interim tribunal by the party now seeking to adduce it;
- (b) as if subsection (4) provided that on determining a reference from an interim tribunal the Tribunal must decide whether the determination of the interim tribunal 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 decision;
- (c) as if subsections (6), (7), (8), (9) and (12) did not apply.

(3) 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

63. The Schedule to this Order has effect for the purpose of modifying the Financial Services and Markets Tribunal Rules 2001(2) as they apply to references made under article 62.

Substitution of proceedings under the Act for proceedings before interim tribunal

64.—(1) This article applies to a notice given by the Authority to a person in discipline which is—

- (a) a notice under section 53(4) that it proposes to vary, or varies with immediate effect, that person's Part IV permission;
- (b) a warning notice under section 54(1) stating that it proposes to cancel his Part IV permission;
- (c) a warning notice under section 63(3) stating that it proposes to withdraw approval under section 63(1);
- (d) a warning notice under section 67(1) stating that it proposes to take action under section 66 (as applied by article 9 of the Civil Remedies Order);
- (e) a warning notice under section 207(1) stating that it proposes to take action under section 205 or 206 (as applied by articles 7 and 8 of the Civil Remedies Order);
- (f) a notice under section 197(3) that it proposes to impose, or imposes with immediate effect, a requirement under section 196;
- (g) a warning notice under section 385(1) stating that it proposes to exercise the power under section 384(5) (as applied by article 3 of the Civil Remedies Order); or
- (h) a decision notice pursuant to article 68, 69, 70, 71, 73, 74 or 75,

provided in each case that the reasons stated in the notice why the Authority proposes to take action relate to or arise from the same failure, misconduct or other contravention which was the subject of

the incomplete disciplinary proceedings to which the person to whom the notice is given was subject immediately before commencement (“the corresponding incomplete disciplinary proceedings”).

(2) The Authority may not after giving a notice to which this article applies, refer the corresponding incomplete disciplinary proceedings to the interim tribunal under article 58(1).

(3) If the Authority gives a notice to which this article applies after having referred the corresponding incomplete disciplinary proceedings to the interim tribunal under article 58(1), the proceedings before the interim tribunal lapse, without prejudice to the power of the interim tribunal under article 89(4).

Service of warning or decision notice

65. The Authority must not give a notice by virtue of which proceedings before an interim tribunal will lapse in accordance with article 64(3) unless—

- (a) the person in discipline consents to the Authority doing so (but that consent is not to be treated as an admission in relation to any matter set out in the notice); or
- (b) the interim tribunal to which the incomplete disciplinary proceedings have been referred approves the giving of the notice