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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 II

EXPEDITED DECISION NOTICES, ETC.

*General*

**Conditions making it appropriate to give a decision notice without a warning notice**

**66.**—(1) Where a provision of this Chapter provides that the Authority may, if the expedited decision conditions are satisfied, give a person (“A”) a decision notice under a provision of the Act without having given A a warning notice, the expedited decision conditions referred to are that—

- (a) the reasons stated in the decision notice given to A relate to or arise from the same failure, misconduct or other contravention which was the subject of the incomplete disciplinary proceedings to which A was subject immediately before commencement;
- (b) A had, before commencement, been given a reasonable opportunity in the course of the incomplete disciplinary proceedings to make representations to the relevant SRO in respect of the failure, misconduct or other contravention which was the subject of the incomplete disciplinary proceedings; and
- (c) the Authority has taken any representations so made by A into account in deciding whether to give A a decision notice and on the terms of that notice.

(2) The Financial Services and Markets Tribunal may take into account, in considering a decision notice referred to it, whether or not the expedited decision conditions were satisfied in relation to that decision notice; but a finding that they were not so satisfied does not affect the validity of the notice.

**Decision notices issued pursuant to this Chapter**

**67.** Where, pursuant to a provision in this Chapter, the Authority gives a decision notice without having given a warning notice, that notice is to be treated for the purposes of section 133(6) as if it had been preceded by a warning notice stating that the Authority proposed to take the action referred to in the decision notice.

*Members of self-regulating organisations*

**Public censure**

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

- (a) the Authority proposes to publish a statement about a person (“P”) under section 205, pursuant to the power conferred on it by article 7 of the Civil Remedies Order;
- (b) the reasons for which the Authority proposes to take action relate to or arise from the same failure, misconduct or other contravention which was the subject of incomplete disciplinary proceedings to which P was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power to make a statement about P corresponding to the power of the Authority under section 205 at the conclusion of those proceedings;
- (d) the expedited decision conditions are satisfied.

(2) In a case where this article applies, the Authority may give a decision notice under section 208(1)(a) without having given a warning notice.

### **Financial penalty**

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

- (a) the Authority proposes to impose a penalty on a person (“P”) under section 206, pursuant to the power conferred on it by article 8 of the Civil Remedies Order;
- (b) the reasons for which the Authority proposes to take action relate to or arise from the same failure, misconduct or other contravention which was the subject of incomplete disciplinary proceedings to which P was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power to impose a penalty on P corresponding to the power of the Authority under section 206 at the conclusion of those proceedings;
- (d) the expedited decision conditions are satisfied.

(2) In a case where this article applies, the Authority may give a decision notice under section 208(1)(b) without having given a warning notice.

### **Power to order restitution**

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

- (a) the Authority proposes to require a person (“P”) to make payments under section 384(5), pursuant to the power conferred on it by article 3 of the Civil Remedies Order;
- (b) the reasons for which 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 P was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power to order P to make payments corresponding to the power of the Authority under section 384(5) at the conclusion of those proceedings;
- (d) the expedited decision conditions are satisfied.

(2) In a case where this article applies, the Authority may give a decision notice under section 386(1) without having given a warning notice.

### **Cancellation of Part IV permission**

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

- (a) the Authority proposes to cancel a person’s Part IV permission under section 54;

- (b) the reasons for which 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 P was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power to expel P from membership at the conclusion of those proceedings;
- (d) the expedited decision conditions are satisfied.

(2) In a case where this article applies, the Authority may give a decision notice under section 54(2) without having given a warning notice.

### **Exercise of own initiative powers**

72.—(1) This article applies where—

- (a) the Authority proposes to exercise its powers to vary a person’s Part IV permission under section 53 or to impose a requirement under section 196;
- (b) the reasons for which the Authority proposes to take action relate to or arise from the same failure, misconduct or other contravention which was the subject of incomplete disciplinary proceedings to which that person (“P”) was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power—
  - (i) to suspend in whole or in part P’s entitlement to carry on investment business (within the meaning of the Financial Services Act);
  - (ii) to terminate part of P’s entitlement to carry on such business;
  - (iii) to impose conditions on P in respect of his carrying on such business.
- (d) the conditions specified in paragraph (3) are satisfied.

(2) In a case where this article applies, the Authority may specify in a notice given under section 53(4) or section 197(3) that the variation has immediate effect.

(3) The conditions specified in this paragraph are that—

- (a) P had, before commencement, been given a reasonable opportunity to make representations to the relevant SRO in respect of the failure, misconduct or other contravention which was the subject of the incomplete disciplinary proceedings; and
- (b) the Authority has taken any representations so made by P into account in deciding whether to specify that the variation has immediate effect.

### *Discipline of registered individuals or persons*

### **Public statement about registered person or individual**

73.—(1) This article applies where—

- (a) the Authority proposes to publish a statement about a person (“RI”) under section 66(3) (b), pursuant to the power conferred on it by article 9 of the Civil Remedies Order;
- (b) the reasons for which 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 RI was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power to make a statement about RI corresponding to the power of the Authority under section 66(3)(b) at the conclusion of those proceedings;

(d) the expedited decision conditions are satisfied.

(2) In a case where this article applies, the Authority may give a decision notice under section 67(4) without having given a warning notice.

**Penalty imposed on registered person or individual**

74.—(1) This article applies where—

- (a) the Authority proposes to impose a penalty on a person (“RI”) under section 66(3)(a), pursuant to the power conferred on it by article 9 of the Civil Remedies Order;
- (b) the reasons for which 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 RI was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power to impose a penalty on RI corresponding to the power of the Authority under section 66(3)(a) at the conclusion of those proceedings;
- (d) the expedited decision conditions are satisfied.

(2) In a case where this article applies, the Authority may give a decision notice under section 67(4) without having given a warning notice.

**Withdrawal of approval of registered person or individual**

75.—(1) This article applies where—

- (a) the Authority proposes to withdraw its approval from a person (“RI”) under section 63(1);
- (b) the reasons for which 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 RI was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power to remove the registered individual or person from its register corresponding to the power of the Authority under section 63(1) against RI at the conclusion of those proceedings;
- (d) the expedited decision conditions are satisfied.

(2) In a case where this article applies, the Authority may give a decision notice under section 63(4) without having given a warning notice.