
STATUTORY INSTRUMENTS

2001 No. 2657

**The Financial Services and Markets Act 2000
(Transitional Provisions and Savings) (Civil Remedies,
Discipline, Criminal Offences etc.) Order 2001**

PART 3

DISCIPLINARY POWERS

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

9.—(1) Paragraph (2) applies where—

- (a) a person was, immediately before commencement—
 - (i) a registered person or former registered person for the purposes of the rules of The Securities and Futures Authority Limited (“SFA rules”);
 - (ii) a registered individual for the purposes of Rule 1.2(2) to (4) of Chapter IV of the rules of the Investment Management Regulatory Organisation Limited (“IMRO rules”); or
 - (iii) a registered individual or former registered individual for the purposes of the rules of the Personal Investment Authority Limited (“PIA rules”);
- (b) it appears to the Authority that that person, before commencement, contravened a requirement imposed by a SFA, IMRO or PIA rule which applied to him in his capacity as a person who performed (or was to perform) a function of the kind which, if performed immediately after commencement, would have been a controlled function within the meaning of Part V (“a relevant pre-commencement requirement”); and
- (c) that organisation had, immediately before commencement, a power to make a statement or impose a penalty corresponding to the power of the Authority under section 66(3)(a) or (b) (imposition of penalties and statements of misconduct) in relation to that contravention but had not exercised that power in relation to that contravention.

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

(3) 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 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 Part V), 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 a contravention of a relevant pre-commencement requirement after the relevant period has expired.

(4) For the purposes of paragraph (3), 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 (3)(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 (3)(b), commencement;
- (c) in the case of a person specified by paragraph (3)(c), the time at which the person ceased to be an approved person.

(5) For the purposes of section 66(4), if the Authority is proposing to take action under section 66 in relation to a contravention of a relevant pre-commencement requirement, the Authority is deemed to know of the misconduct on the first day on which the relevant recognised self-regulating organisation knew of the contravention of the requirement or had information from which the contravention could reasonably have been inferred.

(6) The Authority may not, in the case of any particular contravention of a relevant pre-commencement requirement, impose under section 66 a penalty that exceeds the penalty which the relevant recognised self-regulating organisation could have imposed in relation to that contravention immediately before commencement.

(7) In exercising, or deciding whether to exercise, its powers under section 66 in relation to a contravention of a relevant pre-commencement requirement, the Authority must, in the case of any particular contravention, have regard to any statement issued by the relevant recognised self-regulating organisation of its policy with respect to the imposition of, and amount of, penalties which was in force at the time when the contravention in question occurred.