
STATUTORY INSTRUMENTS

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 6

INFORMATION GATHERING AND INVESTIGATIONS

Regulated persons

14. For the purposes of this Part—

“former regulated person” means any person who was, at any time before commencement, a regulated person but who is not, and never has been, an authorised person within the meaning of the Act;

“regulated person” means—

- (a) an authorised person within the meaning of the Financial Services Act;
- (b) an exempted person within the meaning of that Act by virtue of section 43(1) (listed money market institutions) or section 44(2) (appointed representatives) of that Act;
- (c) an authorised institution within the meaning of the Banking Act;
- (d) a person who was authorised under section 3 or 4 of the Insurance Companies Act(3);
- (e) a European institution within the meaning of the 2BCD Regulations;
- (f) a European investment firm within the meaning of the ISD Regulations;
- (g) an EC company within the meaning of the Insurance Companies Act which, by virtue of paragraph 1 or 8 of Schedule 2F to that Act(4), was able to carry on direct insurance business through a branch in the United Kingdom or provide insurance in the United Kingdom;
- (h) a friendly society which was authorised or treated as authorised for the purposes of Part IV of the Friendly Societies Act 1992, or which was permitted by virtue of section 31(2) or (3) of that Act to carry on any activities without authorisation under that Part; or
- (i) a building society which was authorised or treated as authorised for the purposes of the Building Societies Act.

Power to require information

15.—(1) Section 165 (Authority’s power to require information) has effect as if—

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- (1) Amended by the Bank of England Act 1998 (c. 11) sections 23, 25 and 26 and modified by S.I. 1992/3218, S.I. 1995/3275 and S.I. 1996/1669.
 - (2) Modified by S.I. 1992/3218 and S.I. 1995/3275.
 - (3) Section 3 was amended by S.I. 1997/2781.
 - (4) Inserted by S.I. 1994/1696 and amended by S.I. 1997/2781.

- (a) each reference to an authorised person (except the references in subsections (7)(b) and (8)) included a reference to a former regulated person; and
- (b) the reference in subsection (4) to information and documents reasonably required in connection with the exercise by the Authority of functions conferred on it by or under the Act were, so far as it relates to information and documents held by or on behalf of—
 - (i) a former regulated person, or
 - (ii) a person connected with such a person,
 - a reference to information and documents reasonably required in connection with the exercise by the Authority of functions conferred on the Authority by, or exercisable by the Authority by virtue of, this Order in relation to that former regulated person.

(2) In determining whether a person is connected with a former regulated person under section 165(11), Part I of Schedule 15 has effect as if each reference to an authorised person were a reference to a former regulated person.

Reports by skilled persons

16. Section 166 (reports by skilled persons) has effect as if—

- (a) the reference in subsection (2)(d) to a person who has at any relevant time been a person falling within paragraph (a), (b) or (c) included a reference to a person who has at any relevant time been—
 - (i) a regulated person (“A”);
 - (ii) any other member of A’s group; or
 - (iii) a partnership of which A is a member; and
- (b) so far as it relates to a requirement to be imposed under section 166 on any of the persons specified by paragraph (a), the reference in subsection (1) of that section to any matter about which the Authority has required or could require the provision of information or production of documents under section 165 were a reference to any matter about which the Authority has required or could require the provision of information or production of documents under section 165 by virtue of article 15 of this Order.

Appointment of persons to carry out general investigations

17.—(1) Section 167 (appointment of persons to carry out general investigations) has effect as if—

- (a) the reference in subsection (4) to a former authorised person, so far as it applies to paragraph (a) (but not paragraph (b)) included a reference to a former regulated person; and
- (b) the reference in paragraph (a) of that subsection to an authorised person included a reference to a regulated person.

(2) The Authority may not exercise the power conferred on it by section 167 in relation to a former regulated person unless it considers that an investigation is reasonably required in connection with the exercise by the Authority of functions conferred on it by, or exercisable by the Authority by virtue of, this Order.

(3) The Secretary of State may not exercise the power conferred on him by section 167 in relation to a former regulated person.

Appointment of persons to carry out investigations in particular cases

18.—(1) Section 168(3) applies if it appears to the Authority or the Secretary of State that there are circumstances suggesting that any person may have committed an offence under any of the

following enactments or if it appears to the Authority that any person may have contravened any of the following enactments—

- (a) sections 3, 47, 56⁽⁵⁾, 57⁽⁶⁾, 76⁽⁷⁾ or 200(2) of the Financial Services Act;
- (b) section 3(1) or 18 of the Banking Act⁽⁸⁾;
- (c) section 2 or 72⁽⁹⁾ of the Insurance Companies Act;
- (d) section 9 of, or paragraph 3 of Schedule 3 to, the Building Societies Act;
- (e) section 31 of the Friendly Societies Act 1992.

(2) For the purposes of Part XI, a person appointed under section 168(3) as a result of paragraph (1) is to be treated as having been appointed as a result of subsection (2) of section 168.

(3) Section 168(5) applies if—

- (a) it appears to the Authority or the Secretary of State that there are circumstances suggesting that any person may have committed an offence under any of the provisions specified by article 13 other than those specified by paragraph (1); or

(b) it appears to the Authority that there are circumstances suggesting that—

- (i) any person may have contravened any of the provisions specified by article 2(3) other than those enactments specified by paragraph (1);

(ii) an authorised person who was, immediately before commencement a member of a recognised self-regulating organisation or recognised self-regulating organisation for friendly societies, may have—

(aa) 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),

(bb) committed an act of misconduct within the meaning of rule 7.23A(3) of the SFA rules, or

(cc) committed a relevant IMRO contravention,

as the case may be; or

(iii) paragraph (3) of article 9 may apply in relation to any person.

(4) For the purposes of Part XI, a person appointed under section 168(5) as a result of paragraph (3) is to be treated as having been appointed as a result of subsection (4) of section 168.

(5) Amended by the Companies Act 1989 (c. 40) Schedule 23 and modified by S.I. 1992/3218.

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

(7) Amended by S.I. 1996/2827 and modified by S.I. 1992/3218 and S.I. 1995/3275.

(8) Modified by S.I. 1992/3218.

(9) Amended by the Cable and Broadcasting Act 1984 (c. 46) Schedule 5.