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STATUTORY INSTRUMENTS

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**2017 No. 692**

**The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017**

**PART 10**

**Appeals**

**CHAPTER 1**

**Decisions of the FCA**

**Appeals against decisions of the FCA**

**93.**—(1) A person may appeal from a decision by the FCA under these Regulations to the Upper Tribunal.

(2) The provisions of Part 9 of FSMA (hearings and appeals), apply, subject to the modifications set out in paragraph (3), in respect of appeals to the Upper Tribunal made under this regulation as they apply in respect of references made to that Tribunal under that Act.

(3) Part 9 of FSMA has effect as if—

(a) in section 133 (proceedings before Tribunal: general provision), in subsection (7A)(1), after paragraph (o) there were inserted—

“(p) a decision to take action under any of regulations 76 to 78 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.”; and

(b) for section 133A(2) there were substituted—

**“Proceedings before Tribunal: decision notices**

**133A.**—(1) The action specified in a decision notice given under regulation 81(6) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 must not be taken—

(a) during the period within which the matter to which the notice relates may be referred to the Tribunal under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017; and

(b) if the matter is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.

(2) The Tribunal may, on determining a reference under these Regulations in respect of a decision of the FCA, make recommendations as to its regulating provisions or its procedures.”.

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(1) 2000 c.8. Subsection 7A was inserted by section 23 of the Financial Services Act 2012 (c.21) and amended by section 4(2) of the Financial Services (Banking Reform) Act 2013 (c.33) and by S.I. 2013/1388; 20143/3329.

(2) Section 133A was inserted by S.I. 2010/22 and amended by section 23 of the Financial Services Act 2012.

## CHAPTER 2

### Decisions of the Commissioners

#### Offer of review

**94.**—(1) The Commissioners must offer a person (“P”) a review of a decision that has been notified to P if an appeal lies under this Chapter in respect of the decision.

(2) The offer of a review must be made by notice given to P at the same time as the decision is notified to P.

(3) This regulation does not apply to the notification of the conclusions of a review.

#### Review by the Commissioners

**95.**—(1) The Commissioners must review a decision if—

- (a) they have offered a review of the decision under this Chapter, and
- (b) the person concerned (“P”) notifies the Commissioners that P accepts the offer within 30 days from the date of the notice of the offer of a review.

(2) P may not notify acceptance of the offer where P has already appealed against the decision to the tribunal under regulation 100.

(3) The Commissioners must not review a decision if P has appealed to the tribunal under regulation 100 in respect of the decision.

#### Extensions of time

**96.**—(1) If under this Chapter the Commissioners have offered a person (“P”) a review of a decision the Commissioners may within the relevant period notify P that the relevant period is extended.

(2) If notice is given, the relevant period is extended to the end of 30 days from—

- (a) the date of the notice; or
- (b) any other date set out in the notice or a further notice.

(3) More than one notice may be given under paragraph (1).

(4) In this regulation, “relevant period” means—

- (a) the period of 30 days referred to in regulation 95(1)(b); or
- (b) in the case where one or more notices have already been given under paragraph (1) the period as extended (or as most recently extended) in accordance with paragraph (2).

#### Review out of time

**97.**—(1) This regulation applies if—

- (a) the Commissioners have offered a review of a decision under this Chapter to a person (“P”); and
- (b) P does not accept the offer within the time allowed under regulation 95(1)(b) or 96(2).

(2) The Commissioners must review the decision if—

- (a) after the time allowed, P notifies the Commissioners in writing requesting a review out of time;
- (b) the Commissioners are satisfied that P had a reasonable excuse for not accepting the offer of a review within the time allowed; and

- (c) the Commissioners are satisfied that P made the request without unreasonable delay after the excuse had ceased to apply.

### **Nature of review etc**

**98.**—(1) This regulation applies if the Commissioners are required to undertake a review under regulation 95 or 97.

(2) The nature and extent of the review are to be such as appear appropriate to the Commissioners in the circumstances.

(3) For the purpose of paragraph (2), the Commissioners must, in particular, have regard to steps taken before the beginning of the review—

- (a) by the Commissioners in reaching the decision; and
- (b) by any person in seeking to resolve disagreement about the decision.

(4) The review must take account of any representations made by the person (“P”) at a stage which gives the Commissioners a reasonable opportunity to consider them.

(5) The review may conclude that the decision is to be—

- (a) upheld;
- (b) varied; or
- (c) cancelled.

(6) The Commissioners must give P notice of the conclusions of the review and their reasoning within—

- (a) a period of 45 days beginning with the relevant date; or
- (b) such other period as the Commissioners and P may agree.

(7) In paragraph (6), “relevant date” means—

- (a) in a case falling within regulation 95, the date the Commissioners received notification accepting the offer of a review from P; or
- (b) in a case falling within regulation 97, the date on which the Commissioners decided to undertake the review.

(8) Where the Commissioners are required to undertake a review but do not give notice of the conclusions within the time period specified in paragraph (6), the review is to be treated as having concluded that the decision is upheld.

(9) If paragraph (8) applies, the Commissioners must notify P of the conclusion which the review is treated as having reached.

### **Appeals against decisions of the Commissioners**

**99.**—(1) Any person who is the subject of a decision by the Commissioners under these Regulations may appeal to the tribunal in accordance with regulation 100.

(2) The provisions of Part 5 of the Value Added Tax Act 1994(3) (appeals), subject to the modifications set out in paragraph (3), apply in respect of appeals to the tribunal made under this regulation as they apply in respect of appeals made to the tribunal under section 83 of that Act (appeals)(4).

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(3) 1994 c.23.

(4) Section 83 was amended by section 77(4) of the Finance Act 2009 (c.10), section 200(3) of the Finance Act 2012 (c.14), section 124 of the Finance Act 2016 (c.24) and by S.I. 2009/56.

(3) Part 5 of the Value Added Tax Act 1994 has effect as if sections 83A(5) to 84(6), 85A and 85B (appeals and reviews)(7) were omitted.

(4) The tribunal hearing an appeal under paragraph (1) has the power to—

- (a) quash or vary any decision of the Commissioners, including the power to reduce any penalty to such amount (including nil) as the tribunal thinks appropriate; and
- (b) substitute the tribunal's own decision for any decision quashed on appeal.

(5) For the purpose of an appeal under this regulation, the meaning of “tribunal” is as defined in section 82 of the Value Added Tax Act 1994 (meaning of tribunal)(8).

### **Appeals against decisions of the Commissioners: procedure**

**100.**—(1) Subject to paragraphs (2) to (4), an appeal under regulation 99 is to be made to the tribunal before—

- (a) the end of the period of 30 days beginning with the date of the notice notifying the decision to which the appeal relates; or
- (b) if later, the end of the relevant period (within the meaning of regulation 96).

(2) In a case where the Commissioners are required to undertake a review under regulation 95—

- (a) an appeal may not be made until the conclusion date; and
- (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.

(3) In a case where the Commissioners are requested to undertake a review in accordance with regulation 97—

- (a) an appeal may not be made—
  - (i) unless the Commissioners have notified the person concerned (“P”) as to whether or not a review will be undertaken; and
  - (ii) if the Commissioners have notified P that a review will be undertaken, until the conclusion date;
- (b) any appeal where sub-paragraph (a)(ii) applies is to be made within the period of 30 days beginning with the conclusion date; and
- (c) if the Commissioners have notified P that a review will not be undertaken, an appeal may be made only if the tribunal gives permission to appeal.

(4) In a case where regulation 98(8) applies, an appeal may be made at any time from the end of the period specified in regulation 98(6) to the date 30 days after the conclusion date.

(5) An appeal may be made after the end of the period specified in paragraph (1), (2)(b), 3(b) or (4) if the tribunal gives permission to appeal.

(6) In this regulation, “conclusion date” means the date of the notice notifying the conclusions of the review.

(5) Section 83A was inserted by S.I. 2009/56.

(6) Section 84 was amended by section 31(4) of the Finance Act 1996 (c.8); section 31(3) of the Finance Act 1997 (c.16);, paragraph 4 of Schedule 2 to the Finance Act 1999 (c.16); section 23(3) of the Finance Act 2002 (c.23); section 17 of the Finance Act 2003 (c.14); paragraph 5 of Schedule 2 to the Finance Act 2004 (c.12); section 21(5) of the Finance Act 2006 (c.25); section 93(9) of the Finance Act 2007 (c.11); paragraph 17 of Schedule 22(3) to the Finance Act 2014 (c.26) and section 124(4) of the Finance Act 2016 (c.24) and by S.I. 2008/1146 and 2009/56.

(7) Sections 85A and 85B were inserted by S.I. 2009/56.

(8) Section 82 was amended by S.I. 2009/56.