
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 3

DISCIPLINARY POWERS

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

9.—(1) Paragraph (3) applies where—

- (a) a person was, immediately before commencement—
 - (i) a registered person or former registered person for the purposes of the SFA rules;
 - (ii) a registered individual for the purposes of Rule 1.2(2) to (4) of Chapter IV and Chapter VIII of the IMRO rules; or
 - (iii) a registered individual or former registered individual for the purposes of the PIA rules;
- (b) it appears to the Authority that that person, before commencement,
 - (i) failed to comply with rule 1.8.13(1) of the PIA rules (cases in which a member is liable to disciplinary action etc.),
 - (ii) committed an act of misconduct within the meaning of rule 7.23A(3) of the SFA rules, or
 - (iii) committed a relevant IMRO contravention,in the course of carrying on a relevant activity.

(2) In paragraph (1), “relevant activity” means

- (a) performing a function of the kind which, if performed immediately after commencement, would be a controlled function within the meaning of Part V;
- (b) doing any thing connected with the performance of such a function; or
- (c) doing any thing connected with the regulation of the performance of such a function (including things done before the function had been performed).

(3) The Authority may exercise the power conferred by subsection (3)(a) or (b) (as appropriate) of section 66 in relation to the conduct specified by paragraph (1)(b) as if the person were guilty of misconduct within the meaning of subsection (2) of that section, subject to the condition specified by paragraph (4).

(4) 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 and Chapter VIII 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 section 64(13)), 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 any conduct specified by paragraph (1)(b) after the relevant period has expired.

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

(6) For the purposes of section 66(4), if the Authority is proposing to take action under section 66 in relation to the conduct specified by paragraph (1)(b), the Authority is deemed to know of the misconduct on the first day on which the relevant recognised self-regulating organisation knew of the misconduct or had information from which the misconduct could reasonably have been inferred.

(7) The Authority may not, in relation to any conduct of the kind specified by paragraph (1)(b), impose under section 66 a penalty that exceeds the penalty which the relevant recognised self-regulating organisation could have imposed in relation to that conduct immediately before commencement.

(8) In exercising, or deciding whether to exercise, its powers under section 66 in relation to any conduct of the kind specified by paragraph (1)(b), the Authority must have regard to any statement made by the relevant recognised self-regulating organisation or recognised self-regulating organisation for friendly societies which was in force when the conduct in question took place with respect to its policy on the taking of disciplinary action and the imposition of, and amount of, penalties (whether issued as guidance, contained in the rules of that organisation or otherwise).