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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 I**

**INCOMPLETE DISCIPLINARY PROCEEDINGS**

**Interpretation**

**56.**—(1) In this Part—

“IMRO” means the Investment Management Regulatory Organisation Limited and “IMRO rules” means the rules of IMRO;

“PIA” means the Personal Investment Authority Limited and “PIA rules” means the rules of the PIA;

“SFA” means The Securities and Futures Authority Limited and “SFA rules” means the rules of the SFA.

(2) For the purposes of this Part, “disciplinary proceedings” are proceedings brought—

(a) by IMRO under Rules 4.6 and 5.1 of Chapter VIII of the IMRO rules;

(b) by the PIA serving a notice of proposed order under rule 10.1.4(1) or (2) or issuing formal proceedings under rule 10.1.2(3) of the PIA rules;

(c) by the SFA under Rule 7-23A or 7-24A of the SFA rules.

(3) For the purposes of this Part, a person is treated as being subject to incomplete disciplinary proceedings where—

(a) disciplinary proceedings have been brought against him by a recognised self-regulating organisation in accordance with the rules of that organisation; and

(b) he has not been informed, before commencement, whether or not the organisation has determined to impose on him a disciplinary measure within the meaning of article 76 in respect of the matters which were the subject of the proceedings,

and a person who was, immediately before commencement, subject to incomplete disciplinary proceedings is described as being “in discipline”.

(4) Disciplinary proceedings are to be treated as proceedings begun against the person who was subject to them for the purposes of section 66(4).

(5) In this Part, references to “the Civil Remedies Order” are to the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc.) Order (No. 2) 2001(1);

(6) In this Part—

- (a) “the relevant SRO” in relation to a person in discipline is whichever of IMRO, the PIA or the SFA commenced incomplete disciplinary proceedings against him; and
- (b) “the relevant SRO” in relation to incomplete disciplinary proceedings means whichever of IMRO, the PIA or the SFA is the organisation in accordance with the rules of which those proceedings were commenced.

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**Commencement Information**

**I1** Art. 56 in force at 1.12.2001, see [art. 1\(2\)](#)

**Application of this Chapter**

**57.** This Chapter applies only where the person in discipline is—

- (a) an authorised person (within the meaning of the Act) who was a member of IMRO, the PIA or the SFA immediately before commencement; or
- (b) a person who was, immediately before commencement—
  - (i) a registered individual for the purposes of Rule 1.2.(2) to (4) of Chapter IV and Chapter VIII of the IMRO rules or 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;
  - (ii) a registered individual or former registered individual for the purposes of the PIA rules;
  - (iii) a registered person or former registered person for the purposes of SFA rules.

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**Commencement Information**

**I2** Art. 57 in force at 1.12.2001, see [art. 1\(2\)](#)

**Determination of incomplete disciplinary proceedings**

**58.—(1)** Subject to article 64(2), the Authority may, before the end of the period of six months beginning at commencement, refer the incomplete disciplinary proceedings of a person in discipline to the interim tribunal established in accordance with Chapter IV of this Part.

(2) Where the Authority refers the incomplete disciplinary proceedings to the interim tribunal under paragraph (1), it must notify the person in discipline that it has done so and of the effect of this Order.

(3) The interim tribunal has jurisdiction to determine the incomplete disciplinary proceedings referred to it under paragraph (1) and must—

- (a) determine what (if any) is the appropriate action for the Authority to take against the person who was the subject of the incomplete disciplinary proceedings referred to it, in the exercise of the Authority’s powers under the Act; and
- (b) on determining the reference, remit the matter to the Authority with such directions (if any) as the interim tribunal considers appropriate for giving effect to its determination.

(4) The Authority must act in accordance with the determination of, and any direction given by, the interim tribunal.

**Commencement Information**

**I3** Art. 58 in force at 1.12.2001, see [art. 1\(2\)](#)

**Test to be applied by interim tribunal**

**59.**—(1) Where the issues arising for determination in the incomplete disciplinary proceedings included the issue whether a person who was authorised under the Financial Services Act was a fit and proper person, the interim tribunal must consider instead whether that person is failing or is likely to fail to satisfy the threshold conditions (within the meaning of section 41(1)).

(2) Where the issues arising for determination in the incomplete disciplinary proceedings included the issue whether a person was a fit and proper person to be employed in connection with investment business (within the meaning of the Financial Services Act) or investment business of a particular kind, the interim tribunal must consider instead whether that person is a fit and proper person to perform the functions in relation to the regulated activity corresponding to that investment business which he was performing before commencement.

**Commencement Information**

**I4** Art. 59 in force at 1.12.2001, see [art. 1\(2\)](#)

**Appropriate decisions on determination by interim tribunal**

**60.**—(1) The interim tribunal must not direct the Authority to take action against the person in discipline if the rules of the relevant SRO in respect of that person did not confer a power to take similar action against him.

(2) The Authority must not, in giving effect to any direction of the interim tribunal, impose on a person in discipline a penalty under section 66(3)(a) or 206 that exceeds the penalty which the relevant SRO could have imposed in relation to that conduct at the conclusion of the incomplete disciplinary proceedings.

(3) The Authority must, in giving effect to any direction of the interim tribunal by imposing a penalty on a person in discipline under section 66(3)(a) or 206, have regard to any statement made by the relevant SRO which was in force when the conduct in question took place with respect to its policy on the imposition of and amount of penalties (whether issued as guidance, contained in the rules of that organisation or otherwise).

(4) The interim tribunal must not direct the Authority to exercise its powers under section 66 in respect of a person in discipline unless the Authority would have been able, by virtue of article 9(3) of the Civil Remedies Order, to exercise those powers against that person in respect of his failure, misconduct or other contravention in the absence of the incomplete disciplinary proceedings.

**Commencement Information**

**I5** Art. 60 in force at 1.12.2001, see [art. 1\(2\)](#)

**Decisions taken by the Authority giving effect to interim tribunal directions**

**61.**—(1) Where the Authority implements a direction from the interim tribunal by exercising its power under section 45, sections 53, 54 and 55 do not apply to the exercise of that power.

(2) Where the Authority implements a direction from the interim tribunal by exercising its power under section 63(1), subsections (3) to (6) of that section do not apply to the exercise of that power.

(3) Where the Authority implements a direction from the interim tribunal by exercising its power under section 66(3), section 67 does not apply to the exercise of that power.

(4) Where the Authority implements a direction from the interim tribunal by exercising its power under section 196 or 200(1), section 197 and section 200(2) to (5) do not apply to the exercise of that power.

(5) Where the Authority implements a direction from the interim tribunal by exercising its power under section 205 or 206, sections 207 and 208 do not apply to the exercise of that power.

(6) Where the Authority implements a direction from the interim tribunal by exercising its power under section 384(5), sections 385 and 386 do not apply to the exercise of that power.

(7) Where the Authority implements a direction from the interim tribunal by exercising any of the powers mentioned in paragraphs (1) to (6), it must exercise that power by giving written notice to the person concerned and sections 390(3), (4), (5) and (7) to (9) and 391(4) apply to that notice as they apply to a final notice.

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**Commencement Information**

**I6** Art. 61 in force at 1.12.2001, see [art. 1\(2\)](#)

**Appeal from determination of interim tribunal**

**62.**—(1) Where a person in discipline or the Authority is aggrieved by the determination by the interim tribunal of the incomplete disciplinary proceedings to which that person was subject immediately before commencement, that person or the Authority may refer the matter to the Financial Services and Markets Tribunal.

(2) Section 133 applies to the Tribunal when it is considering a reference made under paragraph (1) with the following modifications—

- (a) as if subsection (3) provided that on such a reference, the Tribunal may consider only the evidence that was considered by the interim tribunal unless fresh evidence comes to light which could not reasonably have been made available to the interim tribunal by the party now seeking to adduce it;
- (b) as if subsection (4) provided that on determining a reference from an interim tribunal the Tribunal must decide whether the determination of the interim tribunal was unlawful or was not justified by the evidence and must remit the matter to the Authority with such directions (if any) as the Tribunal considers appropriate having regard to its decision;
- (c) as if subsections (6), (7), (8), (9) and (12) did not apply.

(3) Article 60 applies to the power of the Tribunal under this article, and to the Authority in giving effect to a direction from the Tribunal as it applies to directions given by the interim tribunal under article 58 and to the action of the Authority in giving effect to such directions.

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**Commencement Information**

**I7** Art. 62 in force at 1.12.2001, see [art. 1\(2\)](#)

## Modification of Tribunal Rules

**63.** The Schedule to this Order has effect for the purpose of modifying the Financial Services and Markets Tribunal Rules 2001(2) as they apply to references made under article 62.

### Commencement Information

**I8** Art. 63 in force at 1.12.2001, see [art. 1\(2\)](#)

## Substitution of proceedings under the Act for proceedings before interim tribunal

**64.**—(1) This article applies to a notice given by the Authority to a person in discipline which is—

- (a) a notice under section 53(4) that it proposes to vary, or varies with immediate effect, that person’s Part IV permission;
- (b) a warning notice under section 54(1) stating that it proposes to cancel his Part IV permission;
- (c) a warning notice under section 63(3) stating that it proposes to withdraw approval under section 63(1);
- (d) a warning notice under section 67(1) stating that it proposes to take action under section 66 (as applied by article 9 of the Civil Remedies Order);
- (e) a warning notice under section 207(1) stating that it proposes to take action under section 205 or 206 (as applied by articles 7 and 8 of the Civil Remedies Order);
- (f) a notice under section 197(3) that it proposes to impose, or imposes with immediate effect, a requirement under section 196;
- (g) a warning notice under section 385(1) stating that it proposes to exercise the power under section 384(5) (as applied by article 3 of the Civil Remedies Order); or
- (h) a decision notice pursuant to article 68, 69, 70, 71, 73, 74 or 75,

provided in each case that the reasons stated in the notice why 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 the person to whom the notice is given was subject immediately before commencement (“the corresponding incomplete disciplinary proceedings”).

(2) The Authority may not after giving a notice to which this article applies, refer the corresponding incomplete disciplinary proceedings to the interim tribunal under article 58(1).

(3) If the Authority gives a notice to which this article applies after having referred the corresponding incomplete disciplinary proceedings to the interim tribunal under article 58(1), the proceedings before the interim tribunal lapse, without prejudice to the power of the interim tribunal under article 89(4).

### Commencement Information

**I9** Art. 64 in force at 1.12.2001, see [art. 1\(2\)](#)

## Service of warning or decision notice

**65.** The Authority must not give a notice by virtue of which proceedings before an interim tribunal will lapse in accordance with article 64(3) unless—

- (a) the person in discipline consents to the Authority doing so (but that consent is not to be treated as an admission in relation to any matter set out in the notice); or
- (b) the interim tribunal to which the incomplete disciplinary proceedings have been referred approves the giving of the notice

**Commencement Information**

**I10** Art. 65 in force at 1.12.2001, see [art. 1\(2\)](#)

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.

**Commencement Information**

**I11** Art. 66 in force at 1.12.2001, see [art. 1\(2\)](#)

**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.

**Commencement Information**

**I12** Art. 67 in force at 1.12.2001, see [art. 1\(2\)](#)

### *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.

#### **Commencement Information**

**I13** Art. 68 in force at 1.12.2001, see [art. 1\(2\)](#)

#### **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.

#### **Commencement Information**

**I14** Art. 69 in force at 1.12.2001, see [art. 1\(2\)](#)

#### **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.

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**Commencement Information**

**I15** Art. 70 in force at 1.12.2001, see [art. 1\(2\)](#)

**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.

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**Commencement Information**

**I16** Art. 71 in force at 1.12.2001, see [art. 1\(2\)](#)

**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.

**Commencement Information**

**I17** Art. 72 in force at 1.12.2001, see [art. 1\(2\)](#)

*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.

**Commencement Information**

**I18** Art. 73 in force at 1.12.2001, see [art. 1\(2\)](#)

**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.

#### Commencement Information

**I19** Art. 74 in force at 1.12.2001, see [art. 1\(2\)](#)

### 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.

#### Commencement Information

**I20** Art. 75 in force at 1.12.2001, see [art. 1\(2\)](#)

## CHAPTER III INCOMPLETE APPEALS

### Definition of “disciplinary measure”

**76.—(1)** In this Chapter, a “disciplinary measure” means—

- (a) any measure imposed by a disciplinary tribunal in accordance with Rule 6.7(6) of Chapter VIII of the IMRO rules;
- (b) any measure imposed by a tribunal in accordance with Rule 10.4.3 of Chapter 10 of the PIA rules;
- (c) any measure imposed by a disciplinary tribunal in accordance with rule 7–30 (penalties), 7–30A (terms and conditions) or 7–31 (compensation orders) of Chapter 7 of the SFA rules.

(2) This Chapter applies only to a disciplinary measure imposed—

- (a) on an authorised person (within the meaning of the Act) who was a member of the recognised self-regulating organisation immediately before commencement; or
- (b) in respect of post commencement actionable misconduct by an individual who was immediately before commencement—
  - (i) a registered individual for the purposes of Rule 1.2.(2) to (4) of Chapter IV and Chapter VIII of the IMRO rules or 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;
  - (ii) a registered individual or former registered individual for the purposes of the PIA rules;

- (iii) a registered person or former registered person for the purposes of SFA rules.
- (3) “Post commencement actionable misconduct” for the purposes of paragraph (2)(b) is any failure, misconduct or contravention—
  - (a) in respect of which the Authority would have power, by virtue of article 9(3) of the Civil Remedies Order, to take action after commencement under section 66, or
  - (b) which the Authority would be entitled to take into account in the exercise of its powers under section 63.

**Commencement Information**

**I21** Art. 76 in force at 1.12.2001, see [art. 1\(2\)](#)

**Incomplete appeals against disciplinary measure**

- 77.—(1) This article applies where—
- (a) a disciplinary measure was imposed on a person;
  - (b) that person has exercised a right to appeal against the imposition of that measure before commencement; but
  - (c) that appeal has not been determined before commencement.
- (2) In a case where this article applies, the Authority must, as soon as practicable after commencement, refer the matter to the interim tribunal to determine the appeal and must notify the appellant that it has done so and of the effect of this Order.
- (3) The interim tribunal has jurisdiction to determine the appeal referred to it under paragraph (2).
- (4) For the purposes of paragraph (1)(b), a right to appeal means—
- (a) in respect of a disciplinary measure imposed by IMRO, a right under Rule 6.7(10) in Chapter VIII of the IMRO rules to refer the matter to the Appeals Tribunal constituted in accordance with that Chapter;
  - (b) in respect of a disciplinary measure imposed by the PIA, a right under Rule 10.5.2(1) of Chapter 10 of the PIA rules to refer the matter to the Appeal Commissioner having jurisdiction in accordance with that Chapter;
  - (c) in respect of a disciplinary measure imposed by the SFA, a right under rule 7–34(3) and 7–34(4) of Chapter 7 of the SFA rules to refer the matter to the Disciplinary Appeal Tribunal constituted in accordance with that Chapter.

**Commencement Information**

**I22** Art. 77 in force at 1.12.2001, see [art. 1\(2\)](#)

**Task of interim tribunal when determining an appeal against disciplinary measure**

- 78.—(1) Where the interim tribunal hears an appeal referred to it under article 77(2), it must—
- (a) determine whether the imposition of the disciplinary measure was unlawful or was not justified by the evidence on which it was based;
  - (b) remit the matter to the Authority with such directions (if any) as the interim tribunal considers appropriate for giving effect to its determination.

(2) The interim tribunal may consider only the evidence which was considered in the course of the proceedings which resulted in the imposition of the disciplinary measure, unless fresh evidence come to light which could not reasonably have been made available then by the party now seeking to adduce it.

(3) Articles 59, 60 and 61 apply to the determination of the interim tribunal and to the action taken by the Authority following a direction by the interim tribunal under paragraph (1).

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**Commencement Information**

**I23** Art. 78 in force at 1.12.2001, see [art. 1\(2\)](#)

**Preservation of right of appeal against disciplinary measure**

**79.**—(1) Where before commencement—

- (a) a disciplinary measure has been imposed on a person;
- (b) the period set by the rules of the organisation which imposed the disciplinary measure during which a right to appeal may be exercised has not expired;
- (c) the right to appeal has not been exercised in accordance with the rules of that body,

the person who had a right to appeal against the imposition of the measure may refer the matter to the Financial Services and Markets Tribunal.

(2) Section 133 applies to the Tribunal in respect of a reference made under paragraph (1) with the following modifications—

- (a) section 133(1)(a) applies as if the period mentioned was so much of the period referred to in paragraph (1)(b) above as had not expired at commencement;
- (b) as if subsection (3) provided that on such a reference, the Tribunal may consider only the evidence which was considered in the course of the proceedings which resulted in the imposition of the disciplinary measure, unless fresh evidence comes to light which could not reasonably have been made available then by the party now seeking to adduce it;
- (c) as if subsection (4) provided that on determining the appeal, the Tribunal must determine whether the imposition of the disciplinary measure was unlawful or was not justified by the evidence and must remit the matter to the Authority with such directions (if any) as the Tribunal considers appropriate having regard to its determination;
- (d) as if subsections (6), (7), (8), (9) and (12) did not apply.

(3) For the purposes of paragraph (1) a right to appeal has the same meaning as in article 77(4).

(4) Article 60 applies to the power of the Tribunal under this article, and to the Authority in giving effect to a direction from the Tribunal as it applies to directions given by the interim tribunal under article 58 and to the action of the Authority in giving effect to such directions.

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**Commencement Information**

**I24** Art. 79 in force at 1.12.2001, see [art. 1\(2\)](#)

**Modification of Tribunal Rules**

**80.** The Schedule to this Order has effect for the purposes of modifying the Financial Services and Markets Tribunal Rules 2001 as they apply to references made under article 79.

**Commencement Information**

**I25** Art. 80 in force at 1.12.2001, see [art. 1\(2\)](#)

**Definition of “intervention measure”**

**81.** In this Chapter, an “intervention measure” means—

- (a) an Intervention within the meaning of Rule 2.1 and 2.2 of Chapter VIII of the IMRO rules;
- (b) an intervention notice given under Rule 9.3 of the PIA rules;
- (c) an intervention order imposed by Rule 7–12 of the SFA rules.

**Commencement Information**

**I26** Art. 81 in force at 1.12.2001, see [art. 1\(2\)](#)

**Intervention measure stayed before commencement**

**82.**—(1) This article applies where before commencement—

- (a) an intervention measure had been imposed on an authorised person (within the meaning of the Act) who was a member of a recognised self-regulating organisation immediately before commencement; and
- (b) a stay had been granted preventing the intervention measure from coming into effect at any time before commencement.

(2) In a case where this article applies—

- (a) the person on whom the intervention measure was imposed is not to be treated as subject to that measure immediately before commencement for the purposes of article 35 of the Authorised Persons Order; and
- (b) any proceedings in respect of an appeal brought by the person against the measure lapse at commencement.

**Commencement Information**

**I27** Art. 82 in force at 1.12.2001, see [art. 1\(2\)](#)

**Intervention measure not stayed before commencement**

**83.**—(1) This article applies where before commencement—

- (a) an intervention measure had been imposed on an authorised person (within the meaning of the Act) who was a member of a recognised self-regulating organisation immediately before commencement; and
- (b) no stay had been granted preventing the intervention measure from coming into effect at any time before commencement;
- (c) the measure has effect after commencement as a requirement imposed under section 43 or 196 of the Act by virtue of article 35 of the Authorised Persons Order; and
- (d) either—

- (i) the person on whom the measure was imposed has exercised a right to appeal in respect of the imposition of that measure but that appeal has not been determined before commencement; or
  - (ii) the period (if any) set by the rules of the organisation for the exercise of the right to appeal in respect of that measure has not expired and no appeal has been lodged in accordance with the rules of that body.
- (2) In a case where this article applies—
- (a) any appeal proceedings in train at commencement in respect of the measure lapse;
  - (b) the person may refer the measure having effect by virtue of article 35 of the Authorised Persons Order to the Tribunal under section 55(2).
- (3) Where the imposition of an intervention measure is referred to the Tribunal under paragraph (2), section 133 and the Financial Services and Markets Tribunal Rules 2001 apply to the reference as if the notice by which the intervention measure was imposed before commencement were a supervisory notice.
- (4) For the purposes of paragraph (1) a right to appeal means—
- (a) in respect of an intervention measure imposed by IMRO, a right under rule 2.3(5) of Chapter VIII of the IMRO rules to appeal to the Appeal Tribunal constituted in accordance with Section 7 of that Chapter;
  - (b) in respect of an intervention measure imposed by the PIA, a right—
    - (i) under Rule 9.4(2) or 9.7.1(1) of the PIA rules to refer the matter to the Membership and Disciplinary Tribunal; or
    - (ii) under Rules 9.7.2(2) and 11.2.1(2) to refer the matter from the Membership and Disciplinary Tribunal to the PIA Appeals Commissioner;
  - (c) in respect of an intervention measure imposed by the SFA, a right under rule 7–20 of the SFA Rules to refer the matter to the chairman or a deputy chairman of the Tribunal Panel in accordance with that rule.

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**Commencement Information**

**I28** Art. 83 in force at 1.12.2001, see [art. 1\(2\)](#)

**Intervention measure against registered individual or person**

- 84.**—(1) This article applies where before commencement—
- (a) an intervention measure had been imposed on a registered person or individual;
  - (b) the measure would (but for this article) have effect after commencement as a limitation on the approval of that person under section 59 by virtue of article 72(2)(b) or 73(3) of the Authorised Persons Order; and
  - (c) either—
    - (i) the person on whom the measure was imposed has exercised a right to appeal in respect of the imposition of that measure but that appeal has not been determined before commencement; or
    - (ii) the period (if any) set by the rules of the body imposing the measure for the exercise of the right to appeal in respect of that measure has not expired and no appeal has been lodged in accordance with the rules of that body.

(2) In a case where this article applies (and whether or not a stay was granted before commencement)—

- (a) the intervention measure is to be disregarded for the purposes of article 72(2)(b) or 73(3) of the Authorised Persons Order;
- (b) any appeal proceedings in train in respect of the measure lapse at commencement.

(3) For the purposes of paragraph (1), a right to appeal has the same meaning it has for the purposes of article 83(1).

#### Commencement Information

**I29** Art. 84 in force at 1.12.2001, see [art. 1\(2\)](#)

#### Summary fine imposed before commencement

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

- (a) a summary fine was imposed on a person before commencement; and
- (b) either—
  - (i) the person on whom the fine was imposed has exercised a right to appeal against the imposition of that fine but that appeal has not been determined before commencement; or
  - (ii) the period set by the rules of the organisation which imposed the fine for the exercise of the right to appeal against that fine has not expired and no appeal has been lodged in accordance with the rules of that body.

(2) In a case where this article applies, the Authority must, if the person on whom the fine was imposed requests, refer the matter to the interim tribunal.

(3) For the purposes of this article, a summary fine is a fine imposed—

- (a) by IMRO under Rule 3.1 of Chapter VIII of the IMRO rules;
- (b) by the SFA under Rule 7–45 of the SFA Rules.

(4) Where the imposition of a summary fine is referred to the interim tribunal under paragraph (2) the interim tribunal must—

- (a) consider whether the decision to impose it was unlawful or was not justified by the evidence on which it was based;
- (b) either cancel the fine or remit the matter to the Authority with a direction to impose a penalty under section 66(3)(a).

(5) Where the Authority imposes a penalty on a person under section 66(3)(a) following a direction from the interim tribunal, section 67 does not apply to the exercise of that power but—

- (a) the Authority must exercise the power by giving written notice to the person concerned; and
- (b) sections 390(3), (4), (5), (8) and (9) and 391(4) apply to that notice as they apply to a final notice.

#### Commencement Information

**I30** Art. 85 in force at 1.12.2001, see [art. 1\(2\)](#)

## CHAPTER IV

### THE INTERIM TRIBUNAL

#### President of the interim tribunal

**86.**—(1) The Treasury must as soon as practicable appoint a person to be the President of the interim tribunal.

(2) The President of the interim tribunal is to hold and vacate office in accordance with the terms of his appointment and may be removed by the Treasury on the ground of incapacity or misbehaviour.

(3) The President may at any time resign office by notice in writing to the Treasury but is eligible for re-appointment if he ceases to hold office.

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#### Commencement Information

**I31** Art. 86 in force at 1.12.2001, see [art. 1\(2\)](#)

#### Constitution of the interim tribunal

**87.**—(1) On a reference to the interim tribunal, the President must appoint the required number of the most appropriate people to act as members of the interim tribunal for the purposes of hearing and determining the reference.

(2) For the purposes of paragraph (1), the following are the most appropriate people—

- (a) a person who was a member of the panel appointed by the relevant SRO before which—
  - (i) the incomplete disciplinary proceedings (in the case of a reference under article 58(1)); or
  - (ii) the appeal (in the case of a reference under article 77(2) or 85(2));

which form or forms the subject of the reference were or was being heard immediately before commencement;

- (b) where it is not reasonably practicable to appoint the required number of members from persons falling within sub-paragraph (a), then a person who was eligible to be appointed by the relevant SRO to a panel to determine incomplete disciplinary proceedings (in the case of a reference under article 58) or an appeal (in the case of a reference under article 77(2) or 85(2));
- (c) where it is not reasonably practicable to appoint the required number of members from persons falling within sub-paragraph (a) or (b), then a person appearing to the President to be qualified by experience or otherwise to deal with the matter referred to the interim tribunal.

(3) For the purpose of this article the “required number” of members of the interim tribunal to hear and determine a particular case is the number of people who would, in accordance with the rules of the relevant SRO, have formed the panel or other body by whom the matter would have been determined but for the repeal of the Financial Services Act.

(4) If, in relation to a particular case, the President falls within the class of the most appropriate people, he may sit as one of the required number of members.

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#### Commencement Information

**I32** Art. 87 in force at 1.12.2001, see [art. 1\(2\)](#)

### Power of the Authority to make arrangements for the interim tribunal

**88.** The Authority may make such arrangements as appear to it to be necessary or expedient for the purpose of establishing and maintaining the interim tribunal and in particular may—

- (a) enter into contracts for the provision of accommodation and any other facilities required by the interim tribunal;
- (b) pay the persons appointed to serve on the interim tribunal (including the President) such remuneration and allowances as it determines, having regard to the remuneration and allowances that were payable to persons falling within article 87(2)(a) before commencement.

#### Commencement Information

**I33** Art. 88 in force at 1.12.2001, see [art. 1\(2\)](#)

### Procedure of the interim tribunal

**89.**—(1) Subject to paragraphs (2) and (3), the interim tribunal must when determining any matter referred to it, adopt, so far as reasonably practicable, the same procedure as would have been adopted by the panel or other body by whom the matter would have been determined but for the repeal of the Financial Services Act (treating the Authority for these purposes as the relevant SRO).

(2) In considering the procedure to be adopted in determining any matter referred to it the interim tribunal—

- (a) must have regard to the desirability of avoiding undue prolongation of proceedings and unnecessary costs being incurred by the parties to the proceedings; and
- (b) for that purpose, may take into account evidence or submissions given or made to the relevant SRO before commencement as if they were given or made to the interim tribunal.

(3) Before remitting any matter to the Authority with directions under article 58(3), 78(1) or 85(4), the interim tribunal must give the parties to the proceedings before it an opportunity to make representations as to what directions it should give the Authority.

(4) Where proceedings before the interim tribunal lapse by virtue of article 64(3), the tribunal may make an order providing for such incidental, consequential or supplementary matters as it considers just and expedient.

(5) Where a matter has been referred to the interim tribunal, that tribunal may, on the application of either of the parties to the proceedings, suspend the effect of a disciplinary or intervention measure (or prevent it from taking effect) until the determination of the reference.

#### Commencement Information

**I34** Art. 89 in force at 1.12.2001, see [art. 1\(2\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001, PART VI.