

**ENFORCEMENT MANUAL (AMENDMENT NO 2) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in the Financial Services and Markets Act 2000.
- (1) section 157(1) (Guidance); and
  - (2) section 210 (Statements of policy).

**Commencement**

- B. This instrument comes into force on 1 September 2003.

**Amendments to the Enforcement manual**

- C. The Enforcement manual is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Enforcement Manual (Amendment No 2) Instrument 2003.

By order of the Board  
17 July 2003

## Annex

### Amendments to the Enforcement manual

In this Annex, underlining indicates new text, and striking through indicates deleted text.

- 13.5.1 G This section sets out the *FSA's* policy and procedures in relation to financial penalties for late submission of reports. It applies to reporting by *firms* required under all *rules* (not including the *listing rules*) which require *firms* to report to the *FSA* on a periodic basis. It also applies to periodic reporting by *firms* required by the provisions specified in (6) and (7). The following is a list of the main periodic reporting *rules* (the list may not be comprehensive) and those other provisions:
- (1) the *rules* set out in *SUP* 10.9.8 (Significant management functions) and *SUP* 16 (Reporting requirements);
  - (2) *IPRU(INS)* 9.37 (4) R, *IPRU(INS)* 9.38 R, and *IPRU(INS)* 9.6 (1) R, *IPRU(INS)* 9.6 (6) (Financial reporting) and *IPRU(INS)* 10.2 (Information to be provided to the *FSA*);
  - (3) *IPRU(FSOC)* 3.1(7) R (Management and control), *IPRU(FSOC)* 5.1(2)R, *IPRU(FSOC)* 5.2(2) R, and *IPRU(FSOC)* 5.2(3)R (Prudential reporting) and *IPRU (FSOC)* 6.3 (1) (Statistical information relating to EEA branches and services operations);
- ...
- 17.1.1 G This chapter applies to:
- (1) a person who is, or has been, an auditors and actuaries appointed by firms (including ICVCs) of a firm appointed under or as a result of a statutory provision;
  - (2) a person who is, or has been, an actuary acting for a firm and appointed under or as a result of a statutory provision; and
  - (3) an auditors appointed by an *AUTs*. under section 340(1) of the Act (Appointment).
- 17.1.2 G Auditors and actuaries fulfil a vital role in the management and conduct of firms and *AUTs*. Regulations made by the Treasury under sections 342(5) and 343(5) [the Financial Services (Communication by Auditors) Regulations 2001 are currently the subject of consultation, draft regulations in relation to actuaries will be published in due course] Provisions of the Act, and rules made under the Act and the *OEIC Regulations 2000* impose various duties on auditors and actuaries. These duties and

the *FSA*'s power to disqualify auditors and *actuaries* if they breach them will assist the *FSA* in pursuing its *regulatory objectives*, ~~of maintaining confidence in the financial system, protecting consumers and preventing financial crime~~. The *FSA*'s power to disqualify auditors in breach of duties imposed by *trust scheme rules* will also assist the *FSA* to achieve these *regulatory objectives* by ensuring that auditors fulfil the duties imposed upon them by these *rules*.

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17.3.1 G Under section 345 of the *Act* (Disqualification), if it appears to the *FSA* that an auditor or *actuary* to whom section 342 of the *Act* applies has failed to comply with a duty imposed on him under the *Act*, it may disqualify him from acting as an auditor or *actuary* for any *firm* or any class of *firm*. Section 342 of the *Act* applies to those auditors and *actuaries* referred to in *ENF* 17.1.1G (1) and (2).

17.3.2 G The duties imposed on the auditors and *actuaries* of *firms* under the *Act* are:

...

- (2) the duties under sections 342(6) (Information given by auditor or actuary to the *FSA*) and 343(6) (Information given by auditor or actuary to the *FSA*: persons with close links) of the *Act* to communicate to the *FSA* any matter prescribed in ~~regulations made by the Treasury~~ The Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001 (SI 2001/2587) and The Financial Services and Markets Act 2000 (Communications by Actuaries) Regulations 2003 (SI 2003/1294);

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17.4.2 G *Appointed actuaries* of *firms* who are approved persons ~~and as such~~ will be subject to the *Statements of Principle* and *Code of Practice for Approved Persons*. When deciding whether to exercise its power to disqualify an *appointed actuary*, the *FSA* will consider whether this particular breach of duty can be adequately addressed by the exercise of its disciplinary powers in relation to *approved persons*. These powers and the factors that the *FSA* will take into account when deciding whether to exercise them are set out in *ENF* 11 (Discipline of authorised firms and approved persons: the *FSA*'s general approach), *ENF* 12 (Discipline of firms and approved persons: public censures and public statements) and *ENF* 13 (Discipline of firms and approved persons: financial penalties).

17.4.2A G In cases where the nature of the breach of duties set out in *ENF* 17.3.2G and *ENF* 17.3.3 G is such that the *FSA* has concerns about the fitness and propriety of an individual auditor or *actuary*, the *FSA* will consider whether it is appropriate to make a *prohibition order* instead of, or in addition to, disqualifying the individual (see *ENF* 8 (Prohibition of individuals)).

17.4.3 G (1) Under section 345(1) of the *Act* (Disqualification), the *FSA* may disqualify an auditor or *actuary* ~~appointed by, or an *actuary* acting for, a *firm* (including an *ICVC*)~~ to whom section 342 of the *Act* applies (see *ENF* 17.3.1G) from acting

for a specific *firm* or a particular class of *firm*. Under section 249(1) of the *Act* (Disqualification of auditor for breach of trust scheme rules), the *FSA* may disqualify an auditor appointed by an *AUT* from acting for any *AUT* or *ICVC*.

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- 17.4.4 G When it decides whether to exercise its power to disqualify an auditor or *actuary* under section 345(1), and what the scope of any disqualification will be, the *FSA* will take into account all the circumstances of the case. These may include, but are not limited to, the following factors:
- (1) the nature and seriousness of any breach of *rules* and the effect of that breach: the *rules* are set out in *SUP* 3 (Auditors) and *SUP* 4 (Actuaries), and in the case of *firms* which are *ICVCs*, in *CIS* 10 (report and accounts) and *CIS* 14 (Termination of authorised funds). The *FSA* will regard as particularly serious any breach of *rules* which has resulted in, or is likely to result in, loss to *consumers* or ~~has resulted, or is likely to result in,~~ damage to confidence in the ~~financial markets~~ *financial system* or an increased risk that a *firm* may be used for the purposes of *financial crime*;
  - (2) ~~[deleted] the nature and seriousness of any breach of the regulations made by the Treasury under section 342(5) (Information given by auditor or actuary to the FSA) and 343(5) (Information given by auditor or actuary to the FSA: persons with close links) of the Act. [The FSA will issue further guidance when these regulations are finalised.] When considering the nature and seriousness of any breach of the duty to disclose information to the FSA the following factors may be considered:~~
    - (a) ~~whether the information related to the fitness and propriety of approved persons;~~
    - (b) ~~whether the information related to a firm's financial soundness;~~
    - (c) ~~whether the information or other circumstances indicated that the firm was in breach, or is likely to breach, any requirement imposed on it by or under the Act;~~
    - (d) ~~whether, in the case of an auditor, information or circumstances have precluded him from stating that the annual accounts of the firm have been properly prepared in accordance with section 235 of the Companies Act 1985;~~
    - (e) ~~whether the information or circumstances show that, in complying with any duties imposed by or under the Act, the firm or the auditor or actuary concerned has disclosed to the FSA or published false, inaccurate or misleading information;~~
  - (3) the nature and effect seriousness of any breach of the duties imposed under the *Act* referred to in *ENF* 17.3.2G ~~failure to disclose in accordance with the Treasury's regulations:~~ the *FSA* will regard as particularly serious any failure

to disclose to it information which has resulted in, or is likely to result in, loss to *consumers* and/or, ~~which has resulted in, or is likely to result in,~~ damage to ~~the integrity of the market~~ confidence in the *financial system* or an increased risk that a *firm* may be used for the purposes of *financial crime*;

- (4) action taken by the auditor or *actuary* to remedy the ~~non-disclosure~~ or breach: this may include whether the auditor or *actuary* brought the breach or ~~non-disclosure~~ to the attention of the *FSA* promptly, the degree of cooperation with the *FSA* in relation to any subsequent investigation, ~~and~~ whether remedial steps have been taken to rectify the breach or ~~non-disclosure~~ and whether reasonable steps have been taken to prevent a similar breach or ~~non-disclosure~~ from occurring;
- (5) action taken by ~~*designated professional bodies*~~ professional bodies: the *FSA* will consider whether any disciplinary action has been or will be taken against the auditor or actuary by a relevant ~~*designated professional body*~~ professional body and whether that action adequately addresses the particular breach of duty;
- (6) the previous compliance record of the auditor or actuary concerned: whether the *FSA* (or a *previous regulator*) or ~~*designated professional body*~~ professional body has imposed any previous disciplinary sanctions on the ~~*firm*~~ firm or individual concerned.

17.4.5 G When deciding whether or not to disqualify an auditor under section 249(1) of the *Act* (Disqualification of auditor for breach of trust scheme rules), and in setting the disqualification, the *FSA* will take into account all the circumstances of the case. These may include, but are not limited to, the following circumstances:

- (1) the effect of the auditor's breach of a duty imposed by *trust scheme rules*: the *FSA* will regard as particularly serious a breach of a duty imposed by trust scheme rules (set out in *CIS 10* (Report and accounts) and *CIS 14* (Termination of authorised funds)) which has resulted in, or is likely to result in, loss to *consumers* or ~~has resulted in, or is likely to result in,~~ damage to ~~the integrity of the financial markets~~ confidence in the *financial system* or an increased risk that a *firm* may be used for the purposes of *financial crime*;

...

- (3) action taken by a relevant ~~*designated professional body*~~ professional body: the *FSA* will consider whether any disciplinary action has or will be taken against the auditor by a ~~*designated professional body*~~ professional body and whether such action adequately addresses the particular breach of a duty imposed by *trust scheme rules*;
- (4) the previous compliance record of the auditor concerned: whether the *FSA* (or a *previous regulator*) or ~~*designated professional body*~~ professional body has imposed any previous disciplinary sanctions on the ~~*firm*~~ firm or individual concerned.

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17.5.2 G The *FSA* will remove a disqualification if it is satisfied that the disqualified *person* will in future comply with the duty in question (and other duties under the *Act*). When it considers whether to grant or refuse a request that a disqualification be removed on these grounds, the *FSA* will take into account all the circumstances of a particular case. These circumstances may include, but are not limited to:

(1) the seriousness of the breach of duty ~~or non-disclosure~~ that resulted in the disqualification;

...

(3) any steps taken by the auditor or *actuary* after the disqualification to remedy the factors which led to the disqualification and any steps taken to prevent a similar breach of duty ~~or non-disclosure~~ from happening again.

...

17.6.1 G A disqualification will come into effect on the date stated in the ~~*decision*~~ *final notice*. ~~unless the decision is referred to the *Tribunal*.~~