



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXV

#### INJUNCTIONS AND RESTITUTION

##### *Restitution required by Authority*

#### **384 Power of Authority to require restitution.**

- (1) The Authority may exercise the power in subsection (5) if it is satisfied that an authorised person (“the person concerned”) has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—
  - (a) that profits have accrued to him as a result of the contravention; or
  - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.
- (2) The Authority may exercise the power in subsection (5) if it is satisfied that a person (“the person concerned”)—
  - (a) has engaged in market abuse, or
  - (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by the person concerned, would amount to market abuse,and the condition mentioned in subsection (3) is fulfilled,
- (3) The condition is—
  - (a) that profits have accrued to the person concerned as a result of the market abuse; or
  - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the market abuse.
- (4) But the Authority may not exercise that power as a result of subsection (2) if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that—

*Status: Point in time view as at 20/07/2012.*

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- (a) the person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of that subsection; or
  - (b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.
- (5) The power referred to in subsections (1) and (2) is a power to require the person concerned, in accordance with such arrangements as the Authority considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the Authority to be just having regard—
- (a) in a case within paragraph (a) of subsection (1) or (3), to the profits appearing to the Authority to have accrued;
  - (b) in a case within paragraph (b) of subsection (1) or (3), to the extent of the loss or other adverse effect;
  - (c) in a case within paragraphs (a) and (b) of subsection (1) or (3), to the profits appearing to the Authority to have accrued and to the extent of the loss or other adverse effect.
- (6) “Appropriate person” means a person appearing to the Authority to be someone—
- (a) to whom the profits mentioned in paragraph (a) of subsection (1) or (3) are attributable; or
  - (b) who has suffered the loss or adverse effect mentioned in paragraph (b) of subsection (1) or (3).
- (7) “Relevant requirement” means—
- (a) a requirement imposed by or under this Act [<sup>F1</sup>or by any directly applicable Community regulation [<sup>F2</sup>or decision] made under the markets in financial instruments directive [<sup>F3</sup>or the UCITS directive][<sup>F4</sup>or by the emission allowance auctioning regulation]]; and
  - (b) a requirement which is imposed by or under any other Act and whose contravention constitutes an offence in relation to which this Act confers power to prosecute on the Authority.
- (8) In the application of subsection (7) to Scotland, in paragraph (b) for “in relation to which this Act confers power to prosecute on the Authority” substitute “ mentioned in paragraph (a) or (b) of section 402(1) ”.

#### Textual Amendments

- F1** Words in s. 384(7)(a) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), [Sch. 5 para. 15](#)
- F2** Words in s. 384(7)(a) definition of "relevant requirement" inserted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(29\)\(a\)](#)
- F3** Words in s. 384(7)(a) definition of "relevant requirement" inserted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(29\)\(b\)](#)
- F4** Words in s. 384(7)(a) inserted (20.7.2012) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2012 \(S.I. 2012/1906\)](#), arts. 1, [3\(13\)](#)

#### Modifications etc. (not altering text)

- C1** S. 384 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, [12\(1\)](#)

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- C2** S. 384(5) extended (with modifications) (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 3** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**  
S. 384(5) extended (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 3**; S.I. 2001/3538, **art. 2(1)**

### **385 Warning notices.**

- (1) If the Authority proposes to exercise the power under section 384(5) in relation to a person, it must give him a warning notice.
- (2) A warning notice under this section must specify the amount which the Authority proposes to require the person concerned to pay or distribute as mentioned in section 384(5).

#### **Modifications etc. (not altering text)**

- C3** S. 385 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 61(6)** (with **art. 23(2)**)

### **386 Decision notices.**

- (1) If the Authority decides to exercise the power under section 384(5), it must give a decision notice to the person in relation to whom the power is exercised.
- (2) The decision notice must—
  - (a) state the amount that he is to pay or distribute as mentioned in section 384(5);
  - (b) identify the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
  - (c) state the arrangements in accordance with which the payment or distribution is to be made.
- (3) If the Authority decides to exercise the power under section 384(5), the person in relation to whom it is exercised may refer the matter to the Tribunal.

#### **Modifications etc. (not altering text)**

- C4** S. 386 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 61(6)** (with **art. 23(2)**)  
**C5** S. 386(1) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 70(2)** (with **art. 23(2)**)

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