



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXVI

#### NOTICES

##### *Conclusion of proceedings*

#### **389 Notices of discontinuance.**

- (1) If [<sup>F1</sup>a regulator] decides not to take—
  - (a) the action proposed in a warning notice [<sup>F2</sup>given by it], or
  - (b) the action to which a decision notice [<sup>F3</sup>given by it] relates,it must give a notice of discontinuance to the person to whom the warning notice or decision notice was given.
- (2) But subsection (1) does not apply if the discontinuance of the proceedings concerned results in the granting of an application made by the person to whom the warning or decision notice was given.
- (3) A notice of discontinuance must identify the proceedings which are being discontinued.

#### **Textual Amendments**

- F1** Words in s. 389(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 28\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F2** Words in s. 389(1)(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 28\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F3** Words in s. 389(1)(b) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 28\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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

- C1** S. 389 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 8(c)** (with **reg. 1(2)(3)**); S.I. 2001/3538, **art. 2(1)**
- C2** S. 389 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 8(c)** (with **reg. 1(2)**)
- C3** S. 389 applied (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), **regs. 1(2), 56** (with **regs. 52-58**)
- C4** S. 389 applied (21.11.2014) by The Central Securities Depositories Regulations 2014 (S.I. 2014/2879), **regs. 1(1), 5(10)**
- C5** S. 389 applied (with modifications) by 2009 c. 1, s. 83ZV (as inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), **arts. 1(2), 97**)

### 390 Final notices.

- (1) If [<sup>F4</sup>a regulator] has given a person a decision notice and the matter was not referred to the Tribunal within the [<sup>F5</sup>time required by Tribunal Procedure Rules], [<sup>F6</sup>the regulator] must, on taking the action to which the decision notice relates, give the person concerned and any person to whom the decision notice was copied a final notice.
- (2) If [<sup>F7</sup>a regulator] has given a person a decision notice and the matter was referred to the Tribunal, [<sup>F8</sup>the regulator] must, on taking action in accordance with any directions given by—
  - (a) the Tribunal, or
  - [<sup>F9</sup>(b) a court on an appeal against the decision of the Tribunal,]
 give that person and any person to whom the decision notice was copied [<sup>F10</sup>the notice required by subsection (2A)].

[<sup>F11</sup>(2A) The notice required by this subsection is—

- (a) in a case where the regulator is acting in accordance with a direction given by the Tribunal under section 133(6)(b), or by the court on an appeal from a decision by the Tribunal under section 133(6), a further decision notice, and
- (b) in any other case, a final notice.]
- (3) A final notice about a statement must—
  - (a) set out the terms of the statement;
  - (b) give details of the manner in which, and the date on which, the statement will be published.
- (4) A final notice about an order must—
  - (a) set out the terms of the order;
  - (b) state the date from which the order has effect.
- (5) A final notice about a penalty must—
  - (a) state the amount of the penalty;
  - (b) state the manner in which, and the period within which, the penalty is to be paid;
  - (c) give details of the way in which the penalty will be recovered if it is not paid by the date stated in the notice.

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- (6) A final notice about a requirement to make a payment or distribution in accordance with section 384(5) must state—
- (a) the persons to whom,
  - (b) the manner in which, and
  - (c) the period within which,
- it must be made.
- (7) In any other case, the final notice must—
- (a) give details of the action being taken;
  - (b) state the date on which the action is to be taken.
- (8) The period stated under subsection (5)(b) or (6)(c) may not be less than 14 days beginning with the date on which the final notice is given.
- (9) If all or any of the amount of a penalty payable under a final notice is outstanding at the end of the period stated under subsection (5)(b), [<sup>F12</sup>the regulator giving the notice] may recover the outstanding amount as a debt due to it.
- (10) If all or any of a required payment or distribution has not been made at the end of a period stated in a final notice under subsection (6)(c), the obligation to make the payment is enforceable, on the application of [<sup>F13</sup>the regulator giving the notice], by injunction or, in Scotland, by an order under section 45 of the <sup>M1</sup>Court of Session Act 1988.

#### Textual Amendments

- F4** Words in s. 390(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 29(2)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F5** Words in s. 390(1) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2)(e), 5(1), **Sch. 2 para. 47(a)**
- F6** Words in s. 390(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 29(2)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F7** Words in s. 390(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 29(3)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F8** Words in s. 390(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 29(3)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F9** S. 390(2)(b) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2)(e), 5(1), **Sch. 2 para. 47(b)**
- F10** Words in s. 390(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 29(3)(c)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F11** S. 390(2A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 29(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F12** Words in s. 390(9) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 29(5)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F13** Words in s. 390(10) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 29(5)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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

- C6** S. 390 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 8(d)** (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**
- C7** S. 390 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 8(d)** (with reg. 1(2))

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- C8** S. 390 applied (21.11.2014) by [The Central Securities Depositories Regulations 2014 \(S.I. 2014/2879\)](#), regs. 1(1), **5(10)**
- C9** S. 390 applied (with modifications) by 2009 c. 1, s. 83ZV (as inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **97**)
- C10** S. 390(3)(4)(7) applied (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2)**, 110(7) (with art. 23(2))
- C11** S. 390(3)-(5)(8)(9) applied (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2)**, 85(5)(b) (with art. 23(2))
- C12** S. 390(3)-(5)(7)-(9) applied (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2)**, 61(7) (with art. 23(2))
- C13** S. 390(7) applied (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2)**, 115(5), 122(4), 129 (with art. 23(2))

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#### **Marginal Citations**

- M1** 1988 c. 36.

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