



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXVII

#### OFFENCES

##### *Miscellaneous offences*

#### **397 Misleading statements and practices.**

- (1) This subsection applies to a person who—
  - (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive in a material particular;
  - (b) dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise; or
  - (c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular.
- (2) A person to whom subsection (1) applies is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made)—
  - (a) to enter or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement; or
  - (b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.
- (3) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.

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- (4) In proceedings for an offence under subsection (2) brought against a person to whom subsection (1) applies as a result of paragraph (a) of that subsection, it is a defence for him to show that the statement, promise or forecast was made in conformity with
- [<sup>F1</sup>(a) price stabilising rules;
  - (b) control of information rules; or
  - (c) the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.]
- (5) In proceedings brought against any person for an offence under subsection (3) it is a defence for him to show—
- (a) that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection;
  - (b) that he acted or engaged in the conduct—
    - (i) for the purpose of stabilising the price of investments; and
    - (ii) in conformity with price stabilising rules; <sup>F2</sup> . . .
  - (c) that he acted or engaged in the conduct in conformity with control of information rules [<sup>F3</sup>; or
  - (a) that he acted or engaged in the conduct in conformity with the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.]
- (6) Subsections (1) and (2) do not apply unless—
- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the United Kingdom or arrangements are made in or from the United Kingdom for the statement, promise or forecast to be made or the facts to be concealed;
  - (b) the person on whom the inducement is intended to or may have effect is in the United Kingdom; or
  - (c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.
- (7) Subsection (3) does not apply unless—
- (a) the act is done, or the course of conduct is engaged in, in the United Kingdom; or
  - (b) the false or misleading impression is created there.
- (8) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.
- (9) “Relevant agreement” means an agreement—
- (a) the entering into or performance of which by either party constitutes an activity of a specified kind or one which falls within a specified class of activity; and

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- (b) which relates to a relevant investment.
- (10) “Relevant investment” means an investment of a specified kind or one which falls within a prescribed class of investment.
- (11) Schedule 2 (except paragraphs 25 and 26) applies for the purposes of subsections (9) and (10) with references to section 22 being read as references to each of those subsections.
- (12) Nothing in Schedule 2, as applied by subsection (11), limits the power conferred by subsection (9) or (10).
- (13) “Investment” includes any asset, right or interest.
- (14) “Specified” means specified in an order made by the Treasury.

#### Textual Amendments

- F1** Words in s. 397(4) substituted (17.3.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), [reg. 8\(2\)](#)
- F2** Word in s. 397(5)(b) repealed (17.3.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), [reg. 8\(3\)](#)
- F3** S. 397(5)(a) and preceding word inserted (17.3.2005) after paragraph (c) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), [reg. 8\(3\)](#)

#### Commencement Information

- I1** S. 397 wholly in force at 1.12.2001; s. 397 not in force at Royal Assent see s. 431(2); s. 397(9)-(14) in force at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(a\)](#), [Sch. Pt. 1](#); s. 397 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

### 398 Misleading the Authority: residual cases.

- (1) A person who, in purported compliance with any requirement imposed by or under this Act, knowingly or recklessly gives the Authority information which is false or misleading in a material particular is guilty of an offence.
- (2) Subsection (1) applies only to a requirement in relation to which no other provision of this Act creates an offence in connection with the giving of information.
- (3) A person guilty of an offence under this section is liable—
- on summary conviction, to a fine not exceeding the statutory maximum;
  - on conviction on indictment, to a fine.

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

- C1** S. 398 extended (1.12.2001) by [S.I. 2001/3646](#), [arts. 1\(2\)](#), [3\(3\)\(b\)\(4\)](#)  
S. 398 excluded (1.12.2001) by [S.I. 2001/3646](#), [arts. 1\(2\)](#), [2\(6\)](#)
- C2** S. 398 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\(2\)](#)
- C3** S. 398 applied (with modifications) (7.6.2010) by [The Credit Rating Agencies Regulations 2010 \(S.I. 2010/906\)](#), [reg. 25](#)

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- C4** S. 398(1)(3) applied (1.12.2001) by S.I. 1995/1537, **reg. 23(5)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1, 509(f)**)
- C5** S. 398(1)(3) applied (6.3.2008) by **The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 38(1)**

### **399 Misleading [<sup>F4</sup>the OFT].**

Section 44 of the <sup>M1</sup>Competition Act 1998 (offences connected with the provision of false or misleading information) applies in relation to any function of [<sup>F5</sup>the Office of Fair Trading] under this Act as if it were a function under Part I of that Act.

#### **Textual Amendments**

- F4** Words in s. 399 sidenote substituted (1.4.2003) by **Enterprise Act 2002 (c. 40), ss. 278(1), 279, Sch. 25 para. 40(16)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)**
- F5** Words in s. 399 substituted (1.4.2003) by **Enterprise Act 2002 (c. 40), ss. 278(1), 279, Sch. 25 para. 40(16)(a); S.I. 2003/766, art. 2, Sch. (with art. 3)**

#### **Marginal Citations**

- M1** 1998 c. 41.

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