



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XXVI

NOTICES

Third party rights and access to evidence

392 Application of sections 393 and 394.

Sections 393 and 394 apply to—

- (a) a warning notice given in accordance with section [F155Z(1)], 57(1), 63(3), [F263B(1),] 67(1), 88(4)(b), [F3section 88B(1),] 92(1), 126(1), [F4131H(1),][F5192L(1),] 207(1), 255(1), 280(1), [F6section 312G(1),] 331(1), [F7345B(1) (whether as a result of section 345(2), 345A(3))] or section 249(1) [F8, 385(1) or 412B(4) or (8)];
- (b) a decision notice given in accordance with section [F955Z(2)], 57(3), 63(4), [F1063B(3),] 67(4), 88(6)(b), [F11section 88B(5),] 92(4), 127(1), [F12131H(4),][F13192L(4),] 208(1), 255(2), 280(2), [F14section 312H(1),] 331(3), [F15345B(4) (whether as a result of section 345(2), 345A(3))] or section 249(1) [F16, 386(1) or 412B(5) or (9)].

Textual Amendments

- F1** Word in s. 392(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 31\(2\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F2** Word in s. 392(a) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\), ss. 24\(1\), 26\(2\)\(e\), Sch. 2 para. 29\(2\)\(a\)](#)
- F3** Words in s. 392 substituted (19.3.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), ss. 18\(5\)\(a\), 122\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.; S.I. 2013/651, art. 2(a)
- F4** Word in s. 392(a) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\), ss. 24\(1\), 26\(2\)\(e\), Sch. 2 para. 29\(2\)\(b\)](#)

Status: Point in time view as at 01/04/2013.

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- F5** Word in s. 392(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 31(2)(b)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F6** Words in s. 392(a) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 8 para. 37(a)** (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F7** Words in s. 392(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 13 para. 8(2)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F8** Words in s. 392(a) substituted (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. 16(a)**
- F9** Word in s. 392(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 31(3)(a)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F10** Word in s. 392(b) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(e), **Sch. 2 para. 29(3)(a)**
- F11** Words in s. 392 substituted (19.3.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 18(5)(b)**, 122(3) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.; S.I. 2013/651, art. 2(a)
- F12** Word in s. 392(b) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(e), **Sch. 2 para. 29(3)(b)**
- F13** Word in s. 392(b) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 31(3)(b)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F14** Words in s. 392(b) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 8 para. 37(b)** (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F15** Words in s. 392(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 13 para. 8(3)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F16** Words in s. 392(b) substituted (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. 16(b)**

Modifications etc. (not altering text)

- C1** S. 392(a) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 46(2), 47(2), 48(2), 52(4), 55(2) (with art. 23(2))

393 Third party rights.

- (1) If any of the reasons contained in a warning notice to which this section applies relates to a matter which—
- (a) identifies a person (“the third party”) other than the person to whom the notice is given, and
 - (b) in the opinion of the [^{F17}regulator giving the notice], is prejudicial to the third party,
- a copy of the notice must be given to the third party.
- (2) Subsection (1) does not require a copy to be given to the third party if the [^{F18}regulator giving the notice] —
- (a) has given him a separate warning notice in relation to the same matter; or
 - (b) gives him such a notice at the same time as it gives the warning notice which identifies him.

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- (3) The notice copied to a third party under subsection (1) must specify a reasonable period (which may not be less than [^{F19}14 days]) within which he may make representations to [^{F20}the regulator giving the notice].
- (4) If any of the reasons contained in a decision notice to which this section applies relates to a matter which—
 - (a) identifies a person (“the third party”) other than the person to whom the decision notice is given, and
 - (b) in the opinion of [^{F21}the regulator giving the notice], is prejudicial to the third party,a copy of the notice must be given to the third party.
- (5) If the decision notice was preceded by a warning notice, a copy of the decision notice must (unless it has been given under subsection (4)) be given to each person to whom the warning notice was copied.
- (6) Subsection (4) does not require a copy to be given to the third party if [^{F22}the regulator giving the notice]—
 - (a) has given him a separate decision notice in relation to the same matter; or
 - (b) gives him such a notice at the same time as it gives the decision notice which identifies him.
- (7) Neither subsection (1) nor subsection (4) requires a copy of a notice to be given to a third party if [^{F23}the regulator giving the notice] considers it impracticable to do so.
- (8) Subsections (9) to (11) apply if the person to whom a decision notice is given has a right to refer the matter to the Tribunal.
- (9) A person to whom a copy of the notice is given under this section may refer to the Tribunal—
 - (a) the decision in question, so far as it is based on a reason of the kind mentioned in subsection (4); or
 - (b) any opinion expressed by [^{F24}the regulator giving the notice] in relation to him.
- (10) The copy must be accompanied by an indication of the third party’s right to make a reference under subsection (9) and of the procedure on such a reference.
- (11) A person who alleges that a copy of the notice should have been given to him, but was not, may refer to the Tribunal the alleged failure and—
 - (a) the decision in question, so far as it is based on a reason of the kind mentioned in subsection (4); or
 - (b) any opinion expressed by [^{F25}the regulator giving the notice] in relation to him.
- (12) Section 394 applies to a third party as it applies to the person to whom the notice to which this section applies was given, in so far as the material [^{F26}to which access must be given] under that section relates to the matter which identifies the third party.
- (13) A copy of a notice given to a third party under this section must be accompanied by a description of the effect of section 394 as it applies to him.
- (14) Any person to whom a warning notice or decision notice was copied under this section must be given a copy of a notice of discontinuance applicable to the proceedings to which the warning notice or decision notice related.

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Textual Amendments

- F17** Words in s. 393(1)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 32(2)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F18** Words in s. 393(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 32(2)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F19** Words in s. 393(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 32(3)(a)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F20** Words in s. 393(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 32(3)(b)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F21** Words in s. 393(4)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 32(4)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F22** Words in s. 393(6) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 32(4)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F23** Words in s. 393(7) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 32(4)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F24** Words in s. 393(9)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 32(4)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F25** Words in s. 393(11)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 32(4)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F26** Words in s. 393(12) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 32(5)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

- C2** S. 393 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 24(3)** (with [reg. 1\(2\)\(3\)](#)); S.I. 2001/3538, **art. 2(1)**
S. 393 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 38(2), 46(2), 47(2), 48(2), 52(4), 55(2)** (with [art. 23\(2\)](#))
- C3** S. 393 applied by [Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001 \(S.I. 2001/544\)](#), **art. 95(10)** (as inserted (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), **arts. 1(3), 13**)
- C4** S. 393 applied (N.I.) (1.11.2004) by [Open-Ended Investment Companies Regulations \(Northern Ireland\) 2004 \(S.R. 2004/335\)](#), **regs. 1(1)(b), 24(3)** (with [reg. 1\(2\)](#))
- C5** S. 393 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](#))
- C6** S. 393(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 36(4)** (with [art. 23\(2\)](#))

394 Access to ^{F27}FCA or PRA] material.

- (1) If ^{F28}a regulator] gives a person (“A”) a notice to which this section applies, it must—
- allow him access to the material on which it relied in taking the decision which gave rise to the obligation to give the notice;
 - allow him access to any secondary material which ^{F29}, in the regulator's opinion,] might undermine that decision.
- (2) But ^{F30}the regulator giving the notice] does not have to allow A access to material under subsection (1) if the material is excluded material or it—
- relates to a case involving a person other than A; and

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- (b) was taken into account by [^{F30}the regulator giving the notice] in A's case only for purposes of comparison with other cases.
- (3) [^{F31}The regulator giving the notice] may refuse access A to particular material which it would otherwise have to allow him access to if, in its opinion, allowing him access to the material—
- (a) would not be in the public interest; or
- (b) would not be fair, having regard to—
- (i) the likely significance of the material to A in relation to the matter in respect of which he has been given a notice to which this section applies; and
- (ii) the potential prejudice to the commercial interests of a person other than A which would be caused by the material's disclosure.
- (4) If [^{F32}the regulator giving the notice] does not allow A access to material because it is excluded material consisting of a protected item, it must give A written notice of—
- (a) the existence of the protected item; and
- (b) [^{F33}the regulator's] decision not to allow him access to it.
- (5) If [^{F34}the regulator giving the notice] refuses under subsection (3) to allow A access to material, it must give him written notice of—
- (a) the refusal; and
- (b) the reasons for it.
- (6) “Secondary material” means material, other than material falling within paragraph (a) of subsection (1) which—
- (a) was considered by [^{F35}the regulator giving the notice] in reaching the decision mentioned in that paragraph; or
- (b) was obtained by [^{F36}the regulator giving the notice in connection with the matter to which that notice] relates but which was not considered by it in reaching that decision.
- (7) “Excluded material” means material which—
- [^{F37}(a) is material the disclosure of which for the purposes of or in connection with any legal proceedings is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000; or]
- (c) is a protected item (as defined in section 413).

Textual Amendments

- F27** Words in s. 394 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 33\(8\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F28** Words in s. 394(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 33\(2\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F29** Words in s. 394(1)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 33\(2\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F30** Words in s. 394(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 33\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F31** Words in s. 394(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 33\(4\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F32** Words in s. 394(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 33\(5\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

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- F33** Words in s. 394(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 33\(5\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F34** Words in s. 394(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 33\(6\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F35** Words in s. 394(6)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 33\(7\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F36** Words in s. 394(6)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 33\(7\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F37** S. 394(7)(a) substituted (2.10.2000) for s. 394(7)(a)(b) by 2000 c. 23, s. 82, [Sch. 4 para. 11](#) (with s. 82(3)); S.I. 2000/2543, [art. 3](#)

Modifications etc. (not altering text)

- C7** S. 394 applied (1.12.2001) by S.I. 2001/1228, [regs. 1\(2\)\(c\), 24\(3\)](#) (with [reg. 1\(2\)\(3\)](#)); S.I. 2001/3538, [art. 2\(1\)](#)
S. 394 excluded (1.12.2001) by S.I. 2001/3592, [arts. 1\(2\), 36\(3\), 38\(2\), 46\(2\), 47\(2\), 48\(2\), 52\(4\), 55\(2\)](#) (with [art. 23\(2\)](#))
- C8** S. 394 applied by [Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001 \(S.I. 2001/544\)](#), art. 95(10) (as inserted (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(3), [13](#))
- C9** S. 394 applied (N.I.) (1.11.2004) by [Open-Ended Investment Companies Regulations \(Northern Ireland\) 2004 \(S.R. 2004/335\)](#), regs. 1(1)(b), [24\(3\)](#) (with [reg. 1\(2\)](#))
- C10** S. 394 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)

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