



# 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 54(1), 57(1), 63(3), 67(1), 88(4)(b), 89(2), 92(1), 126(1), 207(1), 255(1), 280(1), 331(1), 345(2) (whether as a result of subsection (1) of that section or section 249(1)) [<sup>F1</sup>, 385(1) or 412B(4) or (8)];
- (b) a decision notice given in accordance with section 54(2), 57(3), 63(4), 67(4), 88(6)(b), 89(3), 92(4), 127(1), 208(1), 255(2), 280(2), 331(3), 345(3) (whether as a result of subsection (1) of that section or section 249(1)) [<sup>F2</sup>, 386(1) or 412B(5) or (9)].

#### **Textual Amendments**

- F1** 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\(a\)](#)
- F2** 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\(2\)](#))

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### **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 Authority, 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 Authority—
  - (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.
- (3) The notice copied to a third party under subsection (1) must specify a reasonable period (which may not be less than 28 days) within which he may make representations to the Authority.
- (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 the Authority, 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 the Authority—
  - (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 the Authority 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 the Authority 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 the Authority in relation to him.

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- (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 which the Authority must disclose 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.

**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(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 36(4)** (with **art. 23(2)**)

**394 Access to Authority material.**

- (1) If the Authority gives a person (“A”) a notice to which this section applies, it must—
  - (a) allow him access to the material on which it relied in taking the decision which gave rise to the obligation to give the notice;
  - (b) allow him access to any secondary material which, in the opinion of the Authority, might undermine that decision.
- (2) But the Authority does not have to allow A access to material under subsection (1) if the material is excluded material or it—
  - (a) relates to a case involving a person other than A; and
  - (b) was taken into account by the Authority in A’s case only for purposes of comparison with other cases.
- (3) The Authority 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 the Authority does not allow A access to material because it is excluded material consisting of a protected item, it must give A written notice of—

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- (a) the existence of the protected item; and
  - (b) the Authority’s decision not to allow him access to it.
- (5) If the Authority 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 the Authority in reaching the decision mentioned in that paragraph; or
  - (b) was obtained by the Authority in connection with the matter to which the notice to which this section applies relates but which was not considered by it in reaching that decision.
- (7) “Excluded material” means material which—
- [<sup>F3</sup>(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

- F3** 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)

- C6** 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))
- C7** 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**)
- C8** 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))

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