



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XXV

INJUNCTIONS AND RESTITUTION

Restitution required by Authority

VALID FROM 01/12/2001

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.

Status: Point in time view as at 21/06/2001. This version of this provision is not valid for this point in time.

Changes to legislation: Financial Services and Markets Act 2000, Section 384 is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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—
- (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; 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)”.

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\(1\)](#)
- 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\(1\)](#)

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