



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXVI

#### NOTICES

##### *Third party rights and access to evidence*

#### **394 Access to [<sup>F1</sup>FCA or PRA] material.**

- (1) If [<sup>F2</sup>a regulator] 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 [<sup>F3</sup>, in the regulator's opinion,] might undermine that decision.
- (2) But [<sup>F4</sup>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—
  - (a) relates to a case involving a person other than A; and
  - (b) was taken into account by [<sup>F4</sup>the regulator giving the notice] in A’s case only for purposes of comparison with other cases.
- (3) [<sup>F5</sup>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.

*Status: Point in time view as at 10/06/2019. This version of this provision has been superseded.*

*Changes to legislation: Financial Services and Markets Act 2000, Section 394 is up to date with all changes known to be in force on or before 04 June 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) If [<sup>F6</sup>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) [<sup>F7</sup>the regulator's] decision not to allow him access to it.
- (5) If [<sup>F8</sup>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 [<sup>F9</sup>the regulator giving the notice] in reaching the decision mentioned in that paragraph; or
  - (b) was obtained by [<sup>F10</sup>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—
- [<sup>F11</sup>(a) is material the disclosure of which for the purposes of or in connection with any legal proceedings is prohibited by [<sup>F12</sup>section 56 of the Investigatory Powers Act 2016]; or]
  - (c) is a protected item (as defined in section 413).

#### Textual Amendments

- F1** 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.
- F2** 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.
- F3** 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.
- F4** 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.
- F5** 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.
- F6** 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.
- F7** 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.
- F8** 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.
- F9** 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.
- F10** 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.
- F11** 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](#)
- F12** Words in s. 394(7)(a) substituted (27.6.2018) by [Investigatory Powers Act 2016 \(c. 25\), s. 272\(1\), Sch. 10 para. 43](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2018/652, reg. 12(g)(iii)

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

- C1** 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))
- C2** 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**)
- C3** 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))
- C4** 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)
- C5** S. 394 applied (21.11.2014) by The Central Securities Depositories Regulations 2014 (S.I. 2014/2879), regs. 1(1), **5(10)**
- C6** Ss. 392-394 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**)
- C7** Ss. 392-395 applied (with modifications) (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), regs. 1(2), **82** (with regs. 8, 15)
- C8** S. 394 applied (with modifications) by S.I. 2014/2879, reg. 5C(10) (as inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **5(9)** (with regs. 7(4), 9(1)))

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