



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXVI

#### NOTICES

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

- C1** Pt. 26 (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by [1992 c. 40, s. 58A\(6\)\(8\)](#) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by [2001/2617, arts. 2, 8, 13\(1\), Sch. 3 Pt. I para. 75](#) (with [art. 13\(3\), Sch. 5](#))); [S.I. 2001/3538, art. 2\(1\)](#)
- Pt. 26 (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by [1992 c. 40, s. 85\(4B\)](#) (as inserted (17.8.2001 for certain purposes otherwise 1.12.2001) by [S.I. 2001/2617, arts. 2, 8, 13\(1\), Sch. 3 Pt. I para. 95](#) (with [art. 13\(3\), Sch. 5](#))); [S.I. 2001/3538, art. 2\(1\)](#)
- Pt. 26 (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by [1992 c. 40, s. 36A\(5C\)\(5D\)](#) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by [S.I. 2001/2617, arts. 2, 8, 13\(1\), Sch. 3 Pt. II para. 142\(c\)](#) (with [art. 13\(3\), Sch. 5](#))); [S.I. 2001/3538, art. 2\(1\)](#)
- Pt. 26 (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by [1986 c. 53, s. 46A\(6\)\(8\)](#) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by [S.I. 2001/2617, arts. 2, 8, 13\(1\), Sch. 3 Pt. II para. 148](#) (with [art. 13\(3\), Sch. 5](#))); [S.I. 2001/3538, art. 2\(1\)](#)
- Pt. 26 (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by [1986 c. 53, s. 93\(6A\)](#) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by [S.I. 2001/2617, arts. 2, 8, 13\(1\), Sch. 3 Pt. II para. 177\(d\)](#) (with [art. 13\(3\), Sch. 5](#))); [S.I. 2001/3538, art. 2](#)
- C2** Pt. 26 applied (6.3.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\), reg. 44](#)
- C3** Pt. 26 applied (with modifications) (1.5.2009 for certain purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\), regs. 1\(2\)\(b\)\(xiii\)\(c\), 95, Sch. 5 para. 7](#) (with [reg. 3](#)) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\), Sch. 2 para. 155\(6\)\(g\)\(h\)](#) (with [Sch. 2 para. 156](#)))
- C4** Pt. 26 applied (with modifications) (11.2.2010) by [The Cross-Border Payments in Euro Regulations 2010 \(S.I. 2010/89\), reg. 19, Sch. para. 5](#)
- C5** Pt. 26 applied (with modifications) (7.6.2010) by [The Credit Rating Agencies Regulations 2010 \(S.I. 2010/906\), reg. 30](#)

*Status: Point in time view as at 06/06/2013.*

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- C6** Pt. 26 applied (with modifications) (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xiv)(b), 62, **Sch. 3 para. 8** (with reg. 3) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), Sch. 2 para. 196(5)(h))
- C7** Pt. 26 applied (with modifications) (15.1.2013) by [The Payments in Euro \(Credit Transfers and Direct Debits\) Regulations 2012 \(S.I. 2012/3122\)](#), reg. 1, **Sch. para. 5** (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), Sch. 2 para. 248(6)(n)(o))

### Warning notices

#### 387 Warning notices.

- (1) A warning notice must—
- state the action which the [<sup>F1</sup>regulator giving the notice (“the regulator concerned”)] proposes to take;
  - be in writing;
  - give reasons for the proposed action;
  - state whether section 394 applies; and
  - if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it.
- [<sup>F2</sup>(1A) Where the PRA is the regulator concerned and the FCA proposes to refuse consent for the purposes of section 55F, 55I or 59 or to give conditional consent as mentioned in section 55F(5) or 55I(8), the warning notice given by the PRA must—
- state that fact, and
  - give the reasons for the FCA's proposal.]
- (2) [<sup>F3</sup>A warning] notice must specify a reasonable period (which may not be less than [<sup>F4</sup>14 days]) within which the person to whom it is given may make representations to the [<sup>F5</sup>regulator concerned].
- (3) [<sup>F6</sup>The regulator concerned] may extend the period specified in the notice.
- [<sup>F7</sup>(3A) Where the PRA receives any representations in response to a warning notice given by it under section 55X(1) or (2) or 62(2) in a case falling within subsection (1A) it must—
- if the representations are in writing, give a copy to the FCA, or
  - if they are not in writing and have not been given directly to the FCA by the person making them, provide the FCA with a record of them.]
- (4) [<sup>F8</sup>The regulator concerned] must then decide, within a reasonable period, whether to give the person concerned a decision notice.

#### Textual Amendments

- F1** Words in s. 387(1)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 26(2)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F2** S. 387(1A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 9 para. 26(3)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

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- F3** Words in s. 387(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 26(4)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F4** Words in s. 387(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 26(4)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F5** Words in s. 387(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 26(4)(c)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F6** Words in s. 387(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 26(5)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F7** S. 387(3A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 26(6)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F8** Words in s. 387(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 26(7)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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

- C8** S. 387 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 8(a)** (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**
- C9** S. 387 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 8(a)** (with reg. 1(2))
- C10** S. 387 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)

*Decision notices*

**388 Decision notices.**

- (1) A decision notice must—
- (a) be in writing;
  - (b) give [<sup>F9</sup>the reasons of the regulator giving the notice (“the regulator concerned”)] for the decision to take the action to which the notice relates;
  - (c) state whether section 394 applies;
  - (d) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it; and
  - (e) give an indication of—
    - (i) any right to have the matter referred to the Tribunal which is given by this Act; and
    - (ii) the procedure on such a reference.

[<sup>F10</sup>(1A) Where the PRA is the regulator concerned and the FCA has decided to refuse consent for the purposes of section 55F, 55I or 59 or to give conditional consent as mentioned in section 55F(5) or 55I(8), the decision notice given by the PRA must—

- (a) state that fact, and
- (b) give the reasons for the FCA's decision.]

- (2) If the decision notice was preceded by a warning notice, the action to which the decision notice relates must be action under the same Part as the action proposed in the warning notice.

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- (3) [<sup>F11</sup>The regulator concerned] may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.
- (4) [<sup>F12</sup>The regulator concerned] may give a further decision notice as a result of subsection (3) only if the person to whom the original notice was given consents.
- (5) If the person to whom a decision notice is given under subsection (3) had the right to refer the matter to which the original decision notice related to the Tribunal, he has that right as respects the decision notice under subsection (3).

#### Textual Amendments

- F9** Words in s. 388(1)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 27\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F10** S. 388(1A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 27\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F11** Words in s. 388(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 27\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F12** Words in s. 388(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 27\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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

- C11** S. 388 applied (1.12.2001) by [S.I. 2001/1228, regs. 1\(2\)\(c\), 8\(b\)](#) (with [reg. 1\(2\)\(3\)](#)); [S.I. 2001/3538, art. 2\(1\)](#)
- C12** S. 388 applied (N.I.) (1.11.2004) by [Open-Ended Investment Companies Regulations \(Northern Ireland\) 2004 \(S.R. 2004/335\), regs. 1\(1\)\(b\), 8\(b\)](#) (with [reg. 1\(2\)](#))
- C13** S. 388 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](#))

### Conclusion of proceedings

#### 389 Notices of discontinuance.

- (1) If [<sup>F13</sup>a regulator] decides not to take—
  - (a) the action proposed in a warning notice [<sup>F14</sup>given by it], or
  - (b) the action to which a decision notice [<sup>F15</sup>given by it] relates,
 it must give a notice of discontinuance to the person to whom the warning notice or decision notice was given.
- (2) But subsection (1) does not apply if the discontinuance of the proceedings concerned results in the granting of an application made by the person to whom the warning or decision notice was given.
- (3) A notice of discontinuance must identify the proceedings which are being discontinued.

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#### Textual Amendments

- F13** Words in s. 389(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 28\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F14** Words in s. 389(1)(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 28\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F15** Words in s. 389(1)(b) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 28\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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

- C14** S. 389 applied (1.12.2001) by [S.I. 2001/1228, regs. 1\(2\)\(c\), 8\(c\)](#) (with [reg. 1\(2\)\(3\)](#)); [S.I. 2001/3538, art. 2\(1\)](#)
- C15** S. 389 applied (N.I.) (1.11.2004) by [Open-Ended Investment Companies Regulations \(Northern Ireland\) 2004 \(S.R. 2004/335\), regs. 1\(1\)\(b\), 8\(c\)](#) (with [reg. 1\(2\)](#))
- C16** S. 389 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](#))

### 390 Final notices.

- (1) If [<sup>F16</sup>a regulator] has given a person a decision notice and the matter was not referred to the Tribunal within the [<sup>F17</sup>time required by Tribunal Procedure Rules], [<sup>F18</sup>the regulator] must, on taking the action to which the decision notice relates, give the person concerned and any person to whom the decision notice was copied a final notice.
- (2) If [<sup>F19</sup>a regulator] has given a person a decision notice and the matter was referred to the Tribunal, [<sup>F20</sup>the regulator] must, on taking action in accordance with any directions given by—
- (a) the Tribunal, or
  - [<sup>F21</sup>(b) a court on an appeal against the decision of the Tribunal,]
- give that person and any person to whom the decision notice was copied [<sup>F22</sup>the notice required by subsection (2A)].

[<sup>F23</sup>(2A) The notice required by this subsection is—

- (a) in a case where the regulator is acting in accordance with a direction given by the Tribunal under section 133(6)(b), or by the court on an appeal from a decision by the Tribunal under section 133(6), a further decision notice, and
  - (b) in any other case, a final notice.]
- (3) A final notice about a statement must—
- (a) set out the terms of the statement;
  - (b) give details of the manner in which, and the date on which, the statement will be published.
- (4) A final notice about an order must—
- (a) set out the terms of the order;
  - (b) state the date from which the order has effect.
- (5) A final notice about a penalty must—
- (a) state the amount of the penalty;

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- (b) state the manner in which, and the period within which, the penalty is to be paid;
  - (c) give details of the way in which the penalty will be recovered if it is not paid by the date stated in the notice.
- (6) A final notice about a requirement to make a payment or distribution in accordance with section 384(5) must state—
- (a) the persons to whom,
  - (b) the manner in which, and
  - (c) the period within which,
- it must be made.
- (7) In any other case, the final notice must—
- (a) give details of the action being taken;
  - (b) state the date on which the action is to be taken.
- (8) The period stated under subsection (5)(b) or (6)(c) may not be less than 14 days beginning with the date on which the final notice is given.
- (9) If all or any of the amount of a penalty payable under a final notice is outstanding at the end of the period stated under subsection (5)(b), [<sup>F24</sup>the regulator giving the notice] may recover the outstanding amount as a debt due to it.
- (10) If all or any of a required payment or distribution has not been made at the end of a period stated in a final notice under subsection (6)(c), the obligation to make the payment is enforceable, on the application of [<sup>F25</sup>the regulator giving the notice], by injunction or, in Scotland, by an order under section 45 of the <sup>M1</sup>Court of Session Act 1988.

#### Textual Amendments

- F16** Words in s. 390(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 29\(2\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F17** Words in s. 390(1) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\), arts. 1\(2\)\(e\), 5\(1\), Sch. 2 para. 47\(a\)](#)
- F18** Words in s. 390(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 29\(2\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F19** Words in s. 390(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 29\(3\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F20** Words in s. 390(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 29\(3\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F21** S. 390(2)(b) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\), arts. 1\(2\)\(e\), 5\(1\), Sch. 2 para. 47\(b\)](#)
- F22** Words in s. 390(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 29\(3\)\(c\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F23** S. 390(2A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 29\(4\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F24** Words in s. 390(9) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 29\(5\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F25** Words in s. 390(10) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 9 para. 29\(5\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

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- C17** S. 390 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 8(d)** (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**
- C18** S. 390 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 8(d)** (with reg. 1(2))
- C19** S. 390(3)(4)(7) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 110(7)** (with art. 23(2))
- C20** S. 390(3)-(5)(8)(9) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 85(5)(b)** (with art. 23(2))
- C21** S. 390(3)-(5)(7)-(9) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 61(7)** (with art. 23(2))
- C22** S. 390(7) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 115(5), 122(4), 129** (with art. 23(2))

#### **Marginal Citations**

- M1** 1988 c. 36.

### *Publication*

#### **391 Publication.**

[<sup>F26</sup>(1) In the case of a warning notice falling within subsection (1ZB)—

- (a) neither the regulator giving the notice nor a person to whom it is given or copied may publish the notice,
- (b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the regulator giving the notice has published those details, and
- (c) after consulting the persons to whom the notice is given or copied, the regulator giving the notice may publish such information about the matter to which the notice relates as it considers appropriate.

(1ZA) In the case of a warning notice not falling within subsection (1ZB), neither the regulator giving the notice nor a person to whom it is given or copied may publish the notice or any details concerning it.

(1ZB) A warning notice falls within this subsection if it is given under—

- (a) section 63B;
- (b) section 67;
- (c) section 87M;
- (d) section 88B;
- (e) section 89K;
- (f) section 89R;
- (g) section 92;
- (h) section 126;
- (i) section 131H;
- (j) section 192L;
- (k) section 207;
- (l) section 312G;
- (m) section 345B (whether as a result of section 345(2) or 345A(3) or section 249(1) [<sup>F27</sup>or 261K(1)]).

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- [<sup>F28</sup>(1A) A person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless the [<sup>F29</sup>regulator giving the notice] has published the notice or those details.]
- (2) A notice of discontinuance must state that, if the person to whom the notice is given consents, the [<sup>F30</sup>regulator giving the notice] may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.
- (3) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, the [<sup>F31</sup>regulator giving the notice] may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.
- (4) [<sup>F32</sup>The regulator giving a decision or final notice] must publish such information about the matter to which [<sup>F33</sup>the notice] relates as it considers appropriate.
- (5) When a supervisory notice takes effect, the [<sup>F34</sup>regulator giving the notice] must publish such information about the matter to which the notice relates as it considers appropriate.
- [<sup>F35</sup>(5A) Subsection (5) does not apply in relation to a notice given in accordance with section 137S(5) or (8)(a) (but see section 137S(11)).]
- [<sup>F36</sup>(6) The FCA may not publish information under this section if, in its opinion, publication of the information would be—
- (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),
  - (b) prejudicial to the interests of consumers, or
  - (c) detrimental to the stability of the UK financial system.
- (6A) The PRA may not publish information under this section if, in its opinion, publication of the information would be—
- (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),
  - (b) prejudicial to the safety and soundness of PRA-authorized persons, or
  - (c) in a case where section 2C applies, prejudicial to securing the appropriate degree of protection for policyholders.]

(7) Information is to be published under this section in such manner as the [<sup>F37</sup>regulator] considers appropriate.

[<sup>F38</sup>(7A) Where [<sup>F39</sup>a regulator] publishes information under subsection (4) or (5) in respect of a final notice or a supervisory notice which relates to a contravention of a requirement falling within subsection (7B) at the same time as it publishes the information it must notify ESMA that it has done so.

(7B) A requirement falls within this subsection if it is imposed—

    - (a) by or under any provision made by or under this Act which implements Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse),
    - (b) by any directly applicable EU regulation made under that directive,
    - (c) by or under any provision made by or under this Act which implements the markets in financial instruments directive, or



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- (d) by any directly applicable EU regulation made under the markets in financial instruments directive.]
- (8) For the purposes of determining when a supervisory notice takes effect, a matter to which the notice relates is open to review if—
- (a) the period during which any person may refer the matter to the Tribunal is still running;
  - (b) the matter has been referred to the Tribunal but has not been dealt with;
  - (c) the matter has been referred to the Tribunal and dealt with but the period during which an appeal may be brought against the Tribunal’s decision is still running; or
  - (d) such an appeal has been brought but has not been determined.
- (9) “Notice of discontinuance” means a notice given under section 389.
- (10) “Supervisory notice” has the same meaning as in section 395.
- [<sup>F40</sup>(11) Section 425A (meaning of “consumers”) applies for the purposes of this section.]

#### Textual Amendments

- F26** S. 391(1)(1ZA)(1ZB) substituted for s. 391(1) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F27** Words in s. 391(1ZB)(m) inserted (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), regs. 1, [3\(18\)](#) (with reg. 24)
- F28** S. 391(1A) inserted (12.10.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 13\(3\)](#), 26(3); S.I. 2010/2480, [art. 2](#) (with [art. 4](#))
- F29** Words in s. 391(1A) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F30** Words in s. 391(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F31** Words in s. 391(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F32** Words in s. 391(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(4\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F33** Words in s. 391(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(4\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F34** Words in s. 391(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(5\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F35** S. 391(5A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 24\(2\)](#), 122(3) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F36** S. 391(6)(6A) substituted for s. 391(6) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(6\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F37** Word in s. 391(7) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(7\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F38** S. 391(7A)(7B) inserted (16.4.2012) by [The Financial Services \(Omnibus 1 Directive\) Regulations 2012 \(S.I. 2012/916\)](#), regs. 1, [2\(13\)](#)
- F39** Words in s. 391(7A) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 9 para. 30\(8\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F40** S. 391(11) substituted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 24\(1\)](#), 26(1)(l), [Sch. 2 para. 28](#)

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

- C23** S. 391 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 9** (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**
- C24** S. 391 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 9** (with reg. 1(2))
- C25** S. 391: power to amend conferred (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 37(2)(a), 122(3)** (with Sch. 20); S.I. 2013/423, **art. 3, Sch.**
- C26** S. 391 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**)
- C27** S. 391(1)(c) restricted (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013 (S.I. 2013/441), **arts. 1(1), 33**
- C28** S. 391(4)(6)(7) applied (1.12.2001) by S.I. 2001/2957, **arts. 1, 13(8)(a)**, S.I. 2001/3538, **art. 2(1)**
- C29** S. 391(4) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 61(7), 85(5)(b), 110(7), 115(5), 122(4), 129** (with **art. 23(2)**)
- C30** S. 391(8) applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 27(14)** (with reg. 1(2))
- C31** S. 391(8)(a)-(d) applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), **regs. 1(2)(b)(v)(c), {11(13)}** (with reg. 3)
- C32** S. 391(11) modified (18.6.2001) by S.I. 2001/1821, **arts. 1(1), 3(5)**

#### *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 [F4155Z(1)], 57(1), 63(3), [F4263B(1),] 67(1), 88(4)(b), [F43section 88B(1),] 92(1), 126(1), [F44131H(1),][F45192L(1),] 207(1), 255(1), [F46261V(1),] 280(1), [F47section 312G(1),] 331(1), [F48345B(1)] (whether as a result of section 345(2), 345A(3)] or section 249(1) [F49or 261K(1)] [F50, 385(1) or 412B(4) or (8)];
- (b) a decision notice given in accordance with section [F5155Z(2)], 57(3), 63(4), [F5263B(3),] 67(4), 88(6)(b), [F53section 88B(5),] 92(4), 127(1), [F54131H(4),][F55192L(4),] 208(1), 255(2), [F56261V(2),] 280(2), [F57section 312H(1),] 331(3), [F58345B(4)] (whether as a result of section 345(2), 345A(3)] or section 249(1) [F59or 261K(1)] [F60, 386(1) or 412B(5) or (9)].

#### Textual Amendments

- F41** 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.**
- F42** 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)**
- F43** 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)**
- F44** 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)**

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- F45** 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.
- F46** Word in s. 392(a) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(19)(a)(i)** (with reg. 24)
- F47** 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.
- F48** 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.
- F49** Words in s. 392(a) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(19)(a)(ii)** (with reg. 24)
- F50** 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)**
- F51** 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.
- F52** 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)**
- F53** 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)
- F54** 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)**
- F55** 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.
- F56** Word in s. 392(b) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(19)(b)(i)** (with reg. 24)
- F57** 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.
- F58** 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.
- F59** Words in s. 392(b) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(19)(b)(ii)** (with reg. 24)
- F60** 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)**

- C33** 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 [<sup>F61</sup>regulator giving the notice], is prejudicial to the third party,
- a copy of the notice must be given to the third party.

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- (2) Subsection (1) does not require a copy to be given to the third party if the [<sup>F62</sup>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.
- (3) The notice copied to a third party under subsection (1) must specify a reasonable period (which may not be less than [<sup>F63</sup>14 days]) within which he may make representations to [<sup>F64</sup>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 [<sup>F65</sup>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 [<sup>F66</sup>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 [<sup>F67</sup>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 [<sup>F68</sup>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 [<sup>F69</sup>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 [<sup>F70</sup>to which access must be given] under that section relates to the matter which identifies the third party.

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- (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.

#### Textual Amendments

- F61** 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.
- F62** 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.
- F63** 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.
- F64** 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.
- F65** 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.
- F66** 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.
- F67** 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.
- F68** 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.
- F69** 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.
- F70** 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)

- C34** 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\(2\)](#))
- C35** 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](#))
- C36** 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\(2\)](#))
- C37** 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](#))
- C38** S. 393(1) extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 36(4) (with [art. 23\(2\)](#))

### 394 Access to <sup>F71</sup>FCA or PRA] material.

- (1) If <sup>F72</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;

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- (b) allow him access to any secondary material which [<sup>F73</sup>, in the regulator's opinion,] might undermine that decision.
- (2) But [<sup>F74</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>F74</sup>the regulator giving the notice] in A's case only for purposes of comparison with other cases.
- (3) [<sup>F75</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.
- (4) If [<sup>F76</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>F77</sup>the regulator's] decision not to allow him access to it.
- (5) If [<sup>F78</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>F79</sup>the regulator giving the notice] in reaching the decision mentioned in that paragraph; or
  - (b) was obtained by [<sup>F80</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>F81</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

- F71** 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.
- F72** 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.
- F73** 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.

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- F74** 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.
- F75** 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.
- F76** 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.
- F77** 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.
- F78** 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.
- F79** 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.
- F80** 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.
- F81** 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)

- C39** 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))
- C40** 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**)
- C41** 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))
- C42** 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)

### *The [<sup>F82</sup>FCA's and PRA's] procedures*

#### Textual Amendments

- F82** Words in s. 395 cross-heading substituted (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. 9 para. 34(15)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

### **395 The [<sup>F83</sup>FCA's and PRA's] procedures.**

- <sup>F84</sup>(1) Each regulator must determine the procedure that it proposes to follow in relation to the following—
- (a) a decision which gives rise to an obligation to give a supervisory notice,
  - (b) in the case of the FCA, a decision which—
    - (i) gives rise to an obligation for it to give a warning notice or decision notice, or

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- (ii) gives rise to an obligation for the PRA to include a statement under section 387(1A) in a warning notice or a statement under section 388(1A) in a decision notice,
  - (c) in the case of the PRA, a decision which gives rise to an obligation for it to give a warning notice or decision notice, other than a decision which depends entirely on a decision of the FCA of the kind mentioned in paragraph (b)(ii), and
  - (d) a decision under section 391(1)(c) to publish information about the matter to which a warning notice relates.]
- (2) That procedure must be designed to secure, among other things [F85]that—
  - (a) a decision falling within any of paragraphs (a) to (c) of subsection (1) is taken—
    - (i) by a person not directly involved in establishing the evidence on which the decision is based, or
    - (ii) by 2 or more persons who include a person not directly involved in establishing that evidence,
  - (b) a decision falling within paragraph (d) of subsection (1) is taken—
    - (i) by a person other than the person by whom the decision was first proposed, or
    - (ii) by 2 or more persons not including the person by whom the decision was first proposed, and
  - (c) a decision falling within paragraph (d) of subsection (1) is taken in accordance with a procedure which is, as far as possible, the same as that applicable to a decision which gives rise to an obligation to give a warning notice and which falls within paragraph (b) or (c) of subsection (1).]
- (3) But the procedure may permit a decision which gives rise to an obligation to give a supervisory notice to be [F86]taken otherwise than as mentioned in subsection (2) if the person taking the decision is of a level of seniority laid down by the procedure and—
  - (a) in the case of procedure proposed by the FCA, the FCA considers that, in the particular case, it is necessary in order to advance one or more of its operational objectives, or
  - (b) in the case of procedure proposed by the PRA, the PRA considers that, in the particular case, it is necessary in order to advance any of its objectives.]
- (4) A level of seniority laid down by the procedure for the purposes of subsection (3)(b) must be appropriate to the importance of the decision.
- (5) [F87]Each regulator] must issue a statement of [F88]its procedure].
- (6) The statement must be published in the way appearing to [F89]the regulator issuing it] to be best calculated to bring [F90]the statement] to the attention of the public.
- (7) [F91]The regulator issuing the statement] may charge a reasonable fee for providing a person with a copy of the statement.
- (8) [F92]The regulator issuing a statement under this section] must, without delay, give the Treasury a copy of [F93]the statement].
- (9) When [F94]a regulator gives] a supervisory notice, or a warning notice or decision notice, [F95]other than a warning notice or decision notice relating to a decision of the



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PRA that is required by a decision of the FCA of the kind mentioned in subsection (1)(b)(ii) [F96the regulator] must follow its stated procedure.

[F97(9A) When the FCA takes a decision falling within subsection (1)(b)(ii), it must follow its stated procedure.]

(10) If [F98a regulator] changes [F99its procedure] in a material way, it must publish a revised statement.

(11) [F100A regulator's] failure in a particular case to follow its procedure as set out in the latest published statement does not affect the validity of a notice given in that case.

(12) But subsection (11) does not prevent the Tribunal from taking into account any such failure in considering a matter referred to it.

(13) “Supervisory notice” means a notice [F101or notification] given in accordance with section—

[F102(a) 55Y(4), (7) or (8)(b);]

(b) 78(2) or (5);

[F103(bza) 78A(2) or (8)(b);]

[F104(bzb) section 88F(2), (5) or (6)(b);]

[F105(bzc) section 89V(2), (5) or (6)(b);]

[F106(ba) 96C;]

[F107(bb) 87O(2) or (5);]

[F108(bba) section 137S(5) or (8)(a);]

[F109(bc) 191B(1);]

(c) 197(3), (6) or (7)(b);

(d) 259(3), (8) or (9)(b);

[F110(da) 261Z1(3), (8) or (9)(b);]

(e) 268(3), (7)(a) or (9)(a) (as a result of subsection (8)(b));

(f) 282(3), (6) or (7)(b);

[F111(fa) 301J(1);]

(g) 321(2) or (5).

#### Textual Amendments

**F83** Words in s. 395 heading substituted (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. 9 para. 34\(14\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)

**F84** S. 395(1) substituted (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. 9 para. 34\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)

**F85** Words in s. 395(2) substituted (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. 9 para. 34\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)

**F86** Words in s. 395(3) substituted (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. 9 para. 34\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)

**F87** Words in s. 395(5) substituted (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. 9 para. 34\(5\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)

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- F88** Words in s. 395(5) substituted (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. 9 para. 34(5)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F89** Words in s. 395(6) substituted (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. 9 para. 34(6)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F90** Words in s. 395(6) substituted (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. 9 para. 34(6)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F91** Words in s. 395(7) substituted (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. 9 para. 34(7)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F92** Words in s. 395(8) substituted (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. 9 para. 34(8)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F93** Words in s. 395(8) substituted (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. 9 para. 34(8)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F94** Words in s. 395(9) substituted (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. 9 para. 34(9)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F95** Words in s. 395(9) 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. 9 para. 34(9)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F96** Words in s. 395(9) substituted (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. 9 para. 34(9)(c)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F97** S. 395(9A) 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. 9 para. 34(10)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F98** Words in s. 395(10) substituted (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. 9 para. 34(11)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F99** Words in s. 395(10) substituted (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. 9 para. 34(11)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F100** Words in s. 395(11) substituted (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. 9 para. 34(12)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F101** Words in s. 395(13) inserted (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. 17(3), 122(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.; S.I. 2013/651, art. 2(a)
- F102** S. 395(13)(a) substituted (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. 9 para. 34(13)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F103** S. 395(13)(bza) inserted (12.7.2007) by The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), **art. 8**
- F104** S. 395(13)(bzb) inserted (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(6), 122(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.; S.I. 2013/651, art. 2(a)
- F105** S. 395(13)(bzc) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 19(2), 122(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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- F106** S. 395(13)(ba) inserted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), [reg. 7](#)
- F107** S. 395(13)(bb) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), [reg. 2\(1\)](#), [Sch. 1 para. 14](#)
- F108** S. 395(13)(bba) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 24\(3\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F109** S. 395(13)(bc) inserted (21.3.2009) by [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#), [reg. 6\(a\)](#)
- F110** S. 395(13)(da) inserted (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), [regs. 1](#), [3\(20\)](#) (with [reg. 24](#))
- F111** S. 395(13)(fa) inserted (21.3.2009) by [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#), [reg. 6\(b\)](#)

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

- C43** S. 395 applied (1.12.2001) by [S.I. 2001/1228](#), [regs. 1\(2\)\(c\)](#), [10](#) (with [reg. 1\(2\)\(3\)](#)); [S.I. 2001/3538](#), [art. 2\(1\)](#)  
S. 395 amended (1.12.2001) by [S.I. 2001/1228](#), [regs. 1\(2\)\(c\)](#), [27\(15\)](#) (with [reg. 1\(2\)\(3\)](#)); [S.I. 2001/3538](#), [art. 2\(1\)](#)
- C44** S. 395 applied (N.I.) (1.11.2004) by [Open-Ended Investment Companies Regulations \(Northern Ireland\) 2004 \(S.R. 2004/335\)](#), [regs. 1\(1\)\(b\)](#), [10](#) (with [reg. 1\(2\)](#))
- C45** S. 395 modified (N.I.) (1.11.2004) by [Open-Ended Investment Companies Regulations \(Northern Ireland\) 2004 \(S.R. 2004/335\)](#), [regs. 1\(1\)\(b\)](#), [27\(15\)](#) (with [reg. 1\(2\)](#))
- C46** S. 395(1)(9) excluded (1.12.2001) by [S.I. 2001/2957](#), [arts. 1](#), [12\(9\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)
- C47** S. 395(1)(d): power to repeal conferred (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 37\(2\)\(b\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- C48** S. 395(2)(b): power to repeal conferred (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 37\(2\)\(b\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- C49** S. 395(2)(c): power to repeal conferred (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 37\(2\)\(b\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

### **396 Statements under section 395: consultation.**

- (1) Before issuing a statement of <sup>[F112]</sup>its procedure under section 395, <sup>[F113]</sup>the regulator must publish a draft of the proposed statement in the way appearing to <sup>[F114]</sup>it to be best calculated to bring <sup>[F115]</sup>the draft to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the <sup>[F116]</sup>regulator publishing the draft within a specified time.
- (3) <sup>[F117]</sup>Before a regulator issues the proposed statement of its procedure, it must have regard to any representations made to it in accordance with subsection (2).
- (4) If the <sup>[F118]</sup>regulator issues the proposed statement of its procedure, it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2); and
  - (b) its response to them.
- (5) If the <sup>[F119]</sup>statement of the regulator's procedure differs from the draft published by it under subsection (1) in a way which is <sup>[F120]</sup>, in its opinion, significant, <sup>[F121]</sup>it must (in addition to complying with subsection (4)) publish details of the difference.

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(6) [<sup>F122</sup>The regulator publishing a draft under subsection (1)] may charge a reasonable fee for providing a person with a copy of [<sup>F123</sup>the draft].

(7) This section also applies to a proposal to revise a statement of policy.

#### Textual Amendments

- F112** Word in s. 396(1) 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. 9 para. 35(2)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F113** Words in s. 396(1) substituted (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. 9 para. 35(2)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F114** Word in s. 396(1) substituted (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. 9 para. 35(2)(c)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F115** Words in s. 396(1) substituted (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. 9 para. 35(2)(d)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F116** Words in s. 396(2) substituted (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. 9 para. 35(3)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F117** Words in s. 396(3) substituted (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. 9 para. 35(4)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F118** Words in s. 396(4) substituted (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. 9 para. 35(5)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F119** Words in s. 396(5) substituted (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. 9 para. 35(6)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F120** Words in s. 396(5) substituted (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. 9 para. 35(6)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F121** Words in s. 396(5) substituted (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. 9 para. 35(6)(c)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F122** Words in s. 396(6) substituted (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. 9 para. 35(7)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F123** Words in s. 396(6) substituted (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. 9 para. 35(7)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

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