



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XXVI

NOTICES

Third party rights and access to evidence

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 [^{F1}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 [^{F2}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 [^{F3}14 days]) within which he may make representations to [^{F4}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 [^{F5}the regulator giving the notice], is prejudicial to the third party,

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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 [^{F6}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 [^{F7}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 [^{F8}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 [^{F9}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 [^{F10}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.

Textual Amendments

- F1** 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.
- F2** 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.
- F3** 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.
- F4** 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.

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- F5** 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.
- F6** 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.
- F7** 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.
- F8** 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.
- F9** 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.
- F10** 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)

- C1** 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))
- C2** 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**)
- C3** 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))
- C4** 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)
- C5** S. 393 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. 393 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)))
- C9** S. 393(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 36(4)** (with art. 23(2))

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