

Written Ministerial Statement

Disclosure Rules under the Transparency Obligations Directive (2004/109/EC)

The Economic Secretary to the Treasury (Ed Balls): The Treasury has been working closely with the DTI and industry in developing a regime dealing with liability in damages for damage suffered by reliance upon certain financial disclosures to be made under FSA disclosure rules implementing the Transparency Obligations Directive (2004/109/EC).

After the Government's decision to establish a statutory regime for liability in damages to third parties in respect of disclosures under the Transparency Directive, industry made representations to Government that the establishment of this regime, added to other developments in law and regulation, could have serious and unwanted repercussions for issuer liability for disclosures made other than under the Transparency Directive (for example, in response to the FSA disclosure rules). The Government therefore consulted with key stakeholders over the summer. Responses confirmed that, while an extension of the statutory regime was in principle desirable, this is an extremely complex area in which it is vital that the Government gets its policy right.

The consultation and Government response to this consultation can be found at the following web address:

http://www.hm-treasury.gov.uk/documents/financial_services/eu_financial_services/fin_eufs_trans.cfm

Following this consultation, amendments have been made at the Report stage of the Companies Bill (passed by the Commons and now in front of the Lords) to have the following effect:

- extend the scope of the statutory liability regime for financial disclosures to preliminary announcements of the results covered by the existing provision in the Bill;
- clarify the liability of company directors and other senior officers;
- change the territorial coverage of the regime to ensure the liability regime covers all issuers for whom the UK is home Member State as well those issuers for which the UK is not home Member State but whose securities are traded on a regulated market situated or operating in the UK; and
- provide a power in the Companies Bill to enable the Treasury, by secondary legislation subject to the affirmative procedure, to make further provision with regard to the liability of issuers of securities admitted to trading on regulated markets in respect of reports and information issued to shareholders and to those markets.

In relation to the last provision, it will be important for the Government to be able to act quickly to resolve uncertainties in the law relating to the liability in damages of issuers if this is found to be required. For this reason, the Bill, as passed by the House of Commons, gives the Government the power to make further provision about liability for published information. In view of the significance of these proposals for the future of financial markets in the UK and the breadth of the power proposed, the affirmative procedure has been chosen.

To inform the Government's decision on the further changes to the law for issuer liability, if any, are required, the Government has decided to conduct a formal review of the liability of issuers in respect of damage or loss suffered as a consequence of inaccurate, false or misleading information disclosed by issuers or their managements to financial markets (including to their own shareholders or bondholders) or of failure to disclose relevant information promptly or at all. This will take into account both existing regulatory obligations and penalties, including criminal penalties, and the potential for liability in damages under existing common law jurisprudence. It will also need to look at the position in other EU Member States and more widely in the jurisdictions of other substantial financial services markets. Professor Paul Davies QC, the Cassel Professor of Commercial Law at the London School of Economics, has agreed to conduct this review. Detailed terms of reference will be published shortly.

If the review recommends that the Government should introduce a statutory regime for liability in damages of issuers in respect of financial disclosures or that changes should be made to any regime that exists following the enactment of the provisions currently in the Companies Bill the Government will, when it publishes its response to the Review:

- consult fully on the Government's response to the review's proposals;
- publish a full regulatory impact assessment of these proposals; and, subsequently
- bring forward legislation for the new regime.

HM Treasury

25 October 2006