



Companies Act 2006

2006 CHAPTER 46

PART 43

TRANSPARENCY OBLIGATIONS AND RELATED MATTERS

Other matters

1270 Liability for false or misleading statements in certain publications

In Part 6 of the Financial Services and Markets Act 2000 (c. 8), after section 90 insert—

“90A Compensation for statements in certain publications

- (1) The publications to which this section applies are—
- (a) any reports and statements published in response to a requirement imposed by a provision implementing Article 4, 5 or 6 of the transparency obligations directive, and
 - (b) any preliminary statement made in advance of a report or statement to be published in response to a requirement imposed by a provision implementing Article 4 of that directive, to the extent that it contains information that it is intended—
 - (i) will appear in the report or statement, and
 - (ii) will be presented in the report or statement in substantially the same form as that in which it is presented in the preliminary statement.
- (2) The securities to which this section applies are—
- (a) securities that are traded on a regulated market situated or operating in the United Kingdom, and
 - (b) securities that—
 - (i) are traded on a regulated market situated or operating outside the United Kingdom, and

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- (ii) are issued by an issuer for which the United Kingdom is the home Member State within the meaning of Article 2.1(i) of the transparency obligations directive.
- (3) The issuer of securities to which this section applies is liable to pay compensation to a person who has—
 - (a) acquired such securities issued by it, and
 - (b) suffered loss in respect of them as a result of—
 - (i) any untrue or misleading statement in a publication to which this section applies, or
 - (ii) the omission from any such publication of any matter required to be included in it.
- (4) The issuer is so liable only if a person discharging managerial responsibilities within the issuer in relation to the publication—
 - (a) knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading, or
 - (b) knew the omission to be dishonest concealment of a material fact.
- (5) A loss is not regarded as suffered as a result of the statement or omission in the publication unless the person suffering it acquired the relevant securities—
 - (a) in reliance on the information in the publication, and
 - (b) at a time when, and in circumstances in which, it was reasonable for him to rely on that information.
- (6) Except as mentioned in subsection (8)—
 - (a) the issuer is not subject to any other liability than that provided for by this section in respect of loss suffered as a result of reliance by any person on—
 - (i) an untrue or misleading statement in a publication to which this section applies, or
 - (ii) the omission from any such publication of any matter required to be included in it, and
 - (b) a person other than the issuer is not subject to any liability, other than to the issuer, in respect of any such loss.
- (7) Any reference in subsection (6) to a person being subject to a liability includes a reference to another person being entitled as against him to be granted any civil remedy or to rescind or repudiate an agreement.
- (8) This section does not affect—
 - (a) the powers conferred by section 382 and 384 (powers of the court to make a restitution order and of the Authority to require restitution);
 - (b) liability for a civil penalty;
 - (c) liability for a criminal offence.
- (9) For the purposes of this section—
 - (a) the following are persons “discharging managerial responsibilities” in relation to a publication—
 - (i) any director of the issuer (or person occupying the position of director, by whatever name called),

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- (ii) in the case of an issuer whose affairs are managed by its members, any member of the issuer,
 - (iii) in the case of an issuer that has no persons within subparagraph (i) or (ii), any senior executive of the issuer having responsibilities in relation to the publication;
- (b) references to the acquisition by a person of securities include his contracting to acquire them or any interest in them.

90B Power to make further provision about liability for published information

- (1) The Treasury may by regulations make provision about the liability of issuers of securities traded on a regulated market, and other persons, in respect of information published to holders of securities, to the market or to the public generally.
- (2) Regulations under this section may amend any primary or subordinate legislation, including any provision of, or made under, this Act.”.

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