



Issuer liability for public statements tightens from 1 October 2010

Summary and implications

Statutory liability is currently imposed on Main Market listed companies for fraudulent misstatements contained within results statements. From 1 October 2010, the existing regime is being extended to:

- apply to AIM, the PLUS-Quoted market and other markets situated in the UK;
- apply to all regulatory announcements made by a listed company;
- introduce a new offence of delaying the publication of information dishonestly; and
- allow claims by investors who sell or continue to hold (as opposed to only those who buy) securities in reliance on a disclosure by the company.

These new rules will mean that listed companies generally will have to pay more attention to the accuracy of all announcements made to the market. In particular, statements contained in announcements will need to be verified and the decision-making process as to when to make, or to delay, an announcement to the market will need careful consideration.

Key Changes

Markets to which the regime applies

The current regime only covers cases where securities are listed or traded on a regulated market. However, the new regime will cover all cases where securities are listed or traded on any securities market situated in the UK, including AIM and the PLUS-quoted market.

Disclosures covered by the regime

The current regime applies only to annual and half-yearly reports, interim management statements and preliminary results statements.

The new regime will significantly extend this to include all information announced by a company through a regulatory information service (RIS).

Ask a question

If you have any questions please contact Alasdair Steele, Partner
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National Storage Mechanism Launched

The FSA has launched the National Storage Mechanism (NSM), an online storage facility where users will be able to access regulated information, which replaces the FSA's Document Viewing Facility from 31 August 2010. To view the full briefing [click here](#)

New UK Corporate Governance Code for listed Companies

The Financial Reporting Council (FRC) has published a new edition of the UK Corporate Governance Code (previously known as the Combined Code). The new Code will apply to all companies with a premium listing for reporting years beginning on or after 29 June 2010. To view the full briefing [click here](#)

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It will not, however, apply to announcements made through the general or trade press only.

Dishonest Delay

A new offence is being introduced where the listed company acts dishonestly in delaying the publication of information. This offence occurs when both the person responsible for the disclosure and persons who regularly trade on the relevant market would consider the conduct as dishonest.

Potential Claimants

At present, only investors who have acquired securities relying on a disclosure, benefit from the issuer liability regime. The new regime will extend this to include investors who:

- have disposed of securities on reliance on a disclosure; or
- have continued to hold securities on reliance on a disclosure.

Buyers, sellers and continuing investors will all be able to claim

To bring an action however, the investor will need to be able to show that it actively relied on the statement in making its investment decision.

Individual liability

To establish liability, the directors of the listed company (or those with equivalent managerial responsibility) must be shown:

- to have known that the relevant statement was untrue or misleading;
- have been reckless as to whether it was misleading; or
- have known that the omission was the dishonest concealment of the material facts.

Only the listed company will be liable to an investor under the regime, with the company then having to take any appropriate action (probably for negligence and breach of duty) against the responsible person(s) within its organisation.

No direct personal liability of directors

Shareholders would only be able to sue individuals through the derivative action procedure contained in the Companies Act 2006 where the company is a UK-incorporated company.

Practical effects

Most listed companies already take great care in ensuring the accuracy of the information they release to the market. The new regime is likely to result in more careful documentation of that process, with added focus on the verification of announcements and of the decision making process as to when to make an announcement, particularly where there might be scope to argue that an announcement is being delayed in any way.

The structure of the issuer liability regime however may make it difficult for investors to bring successful claims. Establishing each of the limbs necessary to prove a claim is likely to prove extremely complex, particularly as to the knowledge and intent of the company's executives. As a result, we consider it unlikely that many claims will be attempted, except in extreme circumstances, such as clear fraud.

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