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RBS 2010 Bonuses Paid from Losses according to UK Company Law

Fourteen days after receiving Cobden Partners' letter advising RBS that it has overstated its profits and capital by 25bn as at year end 2010, RBS replied on June 14th declining to discuss the matter further.

RBS' response is consistent with Cobden Partners' view that:

- a) RBS was as at 31 December 2010 dangerously undercapitalised;
- b) RBS recent bonuses have been paid despite the RBS being loss-making under UK accounting standards.

Cobden Partners had compared the provisions taken into account by RBS as at 31 December 2010 with the accounts of HM Treasury's Asset Protection Scheme. The APS had assessed the estimated losses of the RBS junk portfolio which is insured by the taxpayer (after the first £60bn losses have been taken by RBS) with the accounts of RBS itself.

RBS' position is believed to be that IFRS accounting standards authorise the non-recognition of future expected losses, but this accounting treatment is inconsistent with UK Company Law, in particular sections 395 and 396 (preparation of accounts) and 836 and 837 (solvency and protection of creditors) of the 2006 Companies Act.

As a reminder, Cobden Partners advised Steve Baker MP in the preparation of his **Financial Services (Regulation of Derivatives) Bill** – published May 13th 2011

The Bill was aimed at remedying circumstances whereby UK Banks are producing rule compliant but misleading accounts that grossly inflate their reported profits and capital bases. Three specific examples:

- a) Banks record unrealised gains in investments as profits, justified under mark to market and mark to model accounting rules;
- b) Banks are unable to take prudent provisions for expected loan losses under the EU's IFRS accounting standards, rules which they have chosen to adopt;
- c) Banks fail to deduct from reported profits expenses such as staff compensation. This has led to Barclays being reported to accounting regulators by investors this May.

Gordon Kerr, Founder of Cobden Partners says:

“Without the exposure of the true state of banks’ accounts as set out in the Bill, taxpayers, regulators and scrutineers will remain unable to assess or properly regulate our banks.

Notes to Editors:

5 days after the Bill’s First Reading the House of Lords’ Select Committee on Economic Affairs produced a detailed report summarising 10 months’ investigations into broadly the same concerns.

<http://www.publications.parliament.uk/pa/ld201011/ldselect/ldeconaf/119/119.pdf>