

FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

CCBB



HOUSE OF LORDS.
LONDON SW1A 0PW

Prime Minister 2

The Lord Chancellor agrees that the SROs should enjoy a limited immunity from 24 April 1986 damages.

CONFIDENTIAL

(self-regulating organisations) DKS 25/4.

My dear Paul:

Financial Services Bill: SROs Liability for Damages

Thank you for your letter of 22 April 1986. When your predecessor wrote to me on 7 November 1985 on immunity from liability for damages for the Securities and Investment Board (SIB), he made it clear that he would resist extending that exemption to self-regulating organisations (SROs) on the grounds that the latter, unlike the SIB, would not be exercising statutory functions. As you rightly point out, it was also then thought that the collapse of an SRO would be less disastrous for self-regulation than collapse of the SIB.

will request if required

As a matter of principle, I still adhere to my view that the lesser the degree of Parliamentary accountability for a body, the greater the need for that body to remain subject to the disciplines of the ordinary law. As far as the SROs are concerned, Parliamentary accountability is at best indirect and, indeed, this would appear to be an intended feature of the self-regulatory system introduced by the Bill. Moreover, you have yourself observed that the SROs would not be exercising statutory powers.

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The Right Honourable
Paul Channon MP
Secretary of State for Trade
and Industry
Department of Trade and Industry
1-19 Victoria Street
London SW1H 0ET

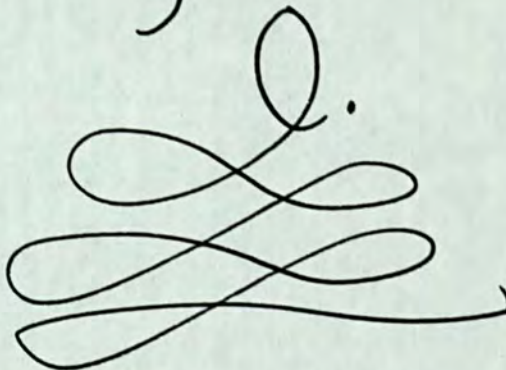
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I am nevertheless bound to take into account the considerable pressure which is now being exerted on you by potential SROs and their veiled threat that they will not perform the functions expected of them under the Bill, unless they are given some measure of immunity from liability for damages. I also assume that if the SROs will not co-operate, this will put the self-regulatory system in jeopardy.

It is only against this background that I would be prepared, albeit with considerable reluctance, to consider an immunity for officers and members of an SRO from liability for damages. Any such immunity should, in my view, be confined to actions for damages leaving aggrieved persons to pursue other remedies against an SRO such as an injunction, or application to quash a decision by way of judicial review. We should also be careful lest this immunity give protection in respect of the normal trading activities of members of an SRO. The only case for an immunity is in respect of the duties which an SRO will be expected to perform under Chapter III of Part II of the Bill i.e. the decisions of an SRO to admit or expel members or otherwise to enforce the rules referred to in clause 8. I trust that any immunity would be so confined.

I am copying this letter to the Prime Minister, the Lord President, the Chancellor of the Exchequer, the Home Secretary, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Attorney-General, the Chief Whip, the Governor of the Bank of England and Sir Robert Armstrong.

Yrs:

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

ECON POR

Goukk

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