

## Chapter 5

# Vote Holder and Issuer Notification Rules

## 5.4 Aggregation of managed holdings

### 5.4.1

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- (1) The *parent undertaking* of a *management company* shall not be required to aggregate its holdings with the holdings managed by the *management company* in accordance with the *United Kingdom* provisions which implemented the *UCITS Directive*, provided such *management company* exercises its voting rights independently from the *parent undertaking*.
- (2) But the requirements for the aggregation of holdings applies if the *parent undertaking*, or another *controlled undertaking* of the *parent undertaking*, has invested in holdings managed by such *management company* and the *management company* has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the *parent* or another *controlled undertaking* of the *parent undertaking*.

[Note: articles 12(4) of the TD]

### 5.4.2

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- (1) The *parent undertaking* of an *investment firm* authorised by the *FCA* or the *PRA* under the *United Kingdom* provisions which implemented *MiFID* shall not be required to aggregate its holdings with the holdings which such *investment firm* manages on a client-by-client basis within the meaning of Article 2(7) of the *MiFID Org Regulation*, provided that:
  - (a) the *investment firm* is authorised to provide such portfolio management;
  - (b) it may only exercise the voting rights attached to such *shares* under instructions given in writing or by *electronic means* or it ensures that individual portfolio management services are conducted independently of any other services under conditions equivalent to those provided for under the *UCITS Directive* by putting into place appropriate mechanisms; and
  - (c) the *investment firm* exercises its voting rights independently from the *parent undertaking*.
- (2) But the requirements for the aggregation of holdings applies if the *parent undertaking*, or another *controlled undertaking* of the *parent undertaking*, has invested in holdings managed by such *investment firm* and the *investment firm* has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting

rights under direct or indirect instructions from the parent or another *controlled undertaking* of the *parent undertaking*.

[Note: article 12(5) of the TD]

**5.4.3** **R** For the purposes of the exemption to the aggregation of holdings provided in ■ DTR 5.4.1 R or ■ DTR 5.4.2 R, a *parent undertaking* of a *management company* or of an *investment firm* shall comply with the following conditions:

- (1) it must not interfere by giving direct or indirect instructions or in any other way in the exercise of the voting rights held by the *management company* or *investment firm*; and
- (2) that *management company* or *investment firm* must be free to exercise, independently of the *parent undertaking*, the voting rights attached to the assets it manages.

[Note: article 10(1) of the TD implementing Directive]

**5.4.4** **R** A *parent undertaking* which wishes to make use of the exemption in relation to *issuers* subject to this chapter whose *shares* are admitted to trading on a *regulated market* must without delay, notify the following to the FCA:

- (1) a list of the names of those *management companies*, *investment firms* or other entities, indicating the *competent authorities* that supervise them, but with no reference to the *issuers* concerned; and
- (2) a statement that, in the case of each such *management company* or *investment firm*, the *parent undertaking* complies with the conditions laid down in ■ DTR 5.4.3 R.

The *parent undertaking* shall update the list referred to in paragraph (1) on an ongoing basis.

[Note: article 10(2) of the TD implementing Directive]

**5.4.5** **R** Where the *parent undertaking* intends to benefit from the exemptions only in relation to the financial instruments referred to in ■ DTR 5.3.1R, it must notify to the FCA only the list referred to in paragraph (1) of ■ DTR 5.4.4 R.

[Note: article 10(3) of the TD implementing Directive and article 13 of the TD]

**5.4.6** **R** A *parent undertaking* of a *management company* or of an *investment firm* must in relation to *issuers* subject to this chapter whose *shares* are admitted to trading on a *regulated market* be able to demonstrate to the FCA on request that:

- (1) the organisational structures of the *parent undertaking* and the *management company* or *investment firm* are such that the voting rights are exercised independently of the *parent undertaking*;
- (2) the persons who decide how the voting rights are exercised act independently;

(3) if the *parent undertaking* is a client of its *management company* or *investment firm* or has a holding in the assets managed by the *management company* or *investment firm*, there is a clear written mandate for an arms-length customer relationship between the *parent undertaking* and the *management company* or *investment firm*.

The requirement in (1) shall imply as a minimum that the *parent undertaking* and the *management company* or *investment firm* must have established written policies and procedures reasonably designed to prevent the distribution of information between the *parent undertaking* and the *management company* or *investment firm* in relation to the exercise of voting rights.

[Note: article 10(4) of the *TD implementing Directive*]

**5.4.7** **R** For the purposes of paragraph (1) of **■ DTR 5.4.3 R** direct instruction means any instruction given by the *parent undertaking*, or another *controlled undertaking* of the *parent undertaking*, specifying how the voting rights are to exercised by the *management company* or *investment firm* in particular cases.

**5.4.8** **R** Indirect instruction means any general or particular instruction, regardless of the form, given by the *parent undertaking*, or another *controlled undertaking* of the *parent undertaking*, that limits the discretion of the *management company* or *investment firm* in relation to the exercise of voting rights in order to serve specific business interests of the *parent undertaking* or another *controlled undertaking* of the *parent undertaking*.

[Note: article 10(5) of the *TD implementing Directive*]

**5.4.9** **R** Undertakings whose registered office is in a *third country* which would have required a *Part 4A permission* to carry on the *regulated activity* specified under article 51ZA of the *Regulated Activities Order* or with regard to portfolio management authorisation under paragraph 4 of Part 3 of Schedule 2 to the *Regulated Activities Order* if it had its registered office or, only in the case of an *investment firm*, its head office within the United Kingdom, shall be exempted from aggregating holdings with the holdings of its *parent undertaking* under this rule provided that they comply with equivalent conditions of independence as *management companies* or *investment firms*.

[Article 23(6) *TD*]

**5.4.10** **R** A *third country* shall be deemed to set conditions of independence equivalent to those set out in this rule where under the law of that country, a *management company* or *investment firm* is required to meet the following conditions:

- (1) the *management company* or *investment firm* must be free in all situations to exercise, independently of its *parent undertaking*, the voting rights attached to the assets it manages;
- (2) the *management company* or *investment firm* must disregard the interests of the *parent undertaking* or of any other *controlled*

*undertaking* of the *parent undertaking* whenever conflicts of interest arise.

5.4.11

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A *parent undertaking* of a *third country* undertaking must comply with the notification requirements in ■ DTR 5.4.4 R (1) and ■ DTR 5.4.5 R and in addition:

- (1) must make a statement that in respect of each *management company* or *investment firm* concerned, the *parent undertaking* complies with the conditions of independence set down in ■ DTR 5.4.10 R; and
- (2) must be able to demonstrate to the *FCA* on request that the requirements of ■ DTR 5.4.6 R are respected.

**[Note: article 23 of the *TD implementing Directive*]**