**Disclosure Guidance and Transparency Rules sourcebook** 

Chapter 5

Vote Holder and Issuer Notification Rules



#### 5.1 Notification of the acquisition or disposal of major shareholdings

#### 5.1.1 In this chapter:

- (1) references to an "issuer", in relation to shares admitted to trading on a regulated market, are to an issuer whose shares are admitted to trading on a regulated market;
- (2) references to a "non-UK issuer" are to an issuer whose shares are admitted to trading on a regulated market other than:
  - (a) a public company within the meaning of section 4(2) of the Companies Act 2006; and
  - (b) a company which is otherwise incorporated in, and whose principal place of business is in, the UK;
- (3) references to "shares" are to shares which are:
  - (a) already issued and carry rights to vote which are exercisable in all circumstances at general meetings of the issuer including shares (such as preference shares) which, following the exercise of an option for their conversion, event of default or otherwise, have become fully enfranchised for voting purposes; and
  - (b) admitted to trading on a regulated or prescribed market;
- (4) an acquisition or disposal of shares is to be regarded as effective when the relevant transaction is executed unless the transaction provides for settlement to be subject to conditions which are beyond the control of the parties in which case the acquisition or disposal is to be regarded as effective on the settlement of the transaction; and
- (5) [deleted]
- (6) for the purposes of calculating whether any percentage threshold is reached, exceeded or fallen below and in any resulting notification, the proportion of voting rights held shall if necessary be rounded down to the next whole number.

### 5.1.2



A person must notify the issuer of the percentage of its voting rights he holds as shareholder or holds or is deemed to hold through his direct or indirect holding of financial instruments falling within ■ DTR 5.3.1R (1) (or a combination of such holdings) if the percentage of those voting rights:

- (1) reaches, exceeds or falls below 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10% and each 1% threshold thereafter up to 100% (or in the case of a non-UK issuer on the basis of thresholds at 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%) as a result of an acquisition or disposal of shares or financial instruments falling within ■ DTR 5.3.1 R; or
- (2) reaches, exceeds or falls below an applicable threshold in (1) as a result of events changing the breakdown of voting rights and on the basis of information disclosed by the issuer in accordance with ■ DTR 5.6.1 Rand ■ DTR 5.6.1A R;

and in the case of an issuer which is not incorporated in the United Kingdom a notification under (2) must be made on the basis of equivalent events and disclosed information.

[Note: articles 9(1), 9(2), 13(1) and 13a(1) of the TD]

## Certain voting rights to be disregarded

### 5.1.3



Voting rights attaching to the following shares are to be disregarded for the purposes of determining whether a person has a notification obligation in accordance with the thresholds in ■ DTR 5.1.2 R:

- (1) (a) shares acquired; or
  - (b) shares underlying financial instruments within DTR 5.3.1R(1) to the extent that such financial instruments are acquired:

for the sole purpose of clearing and settlement within a settlement cycle not exceeding the period beginning with the transaction and ending at the close of the third trading day following the day of the execution of the transaction (irrespective of whether the transaction is conducted on-exchange);

- (2) (a) shares held; or
  - (b) shares underlying financial instruments within DTR 5.3.1R(1) to the extent that such financial instruments are held;

by a custodian (or nominee) in its custodian (or nominee) capacity (whether operating from an establishment in the UK or elsewhere) provided such a person can only exercise the voting rights attached to such shares under instructions given in writing or by electronic means;

- (3) (a) shares held; or
  - (b) shares underlying financial instruments within DTR 5.3.1R(1) to the extent that such financial instruments are held:

by a market maker acting in that capacity subject to the percentage of such shares not being equal to or in excess of 10% and subject to the market maker satisfying the criteria and complying with the conditions and operating requirements set out in ■ DTR 5.1.4 R;

- (4) (a) shares held; or
  - (b) shares underlying financial instruments within DTR 5.3.1R(1) to the extent that such financial instruments are held;

by a credit institution or investment firm provided that:

- (i) the shares, or financial instruments, are held within the trading book of the credit institution or investment firm;
- (ii) the voting rights attached to such shares do not exceed 5%;
- (iii) the voting rights attached to shares in, or related to financial instruments in, the trading book are not exercised or otherwise used to intervene in the management of the issuer.
- (5) shares held by a collateral taker under a collateral transaction which involves the outright transfer of securities provided the collateral taker does not declare any intention of exercising (and does not exercise) the voting rights attaching to such shares.
- (6) [deleted]
- (7) shares acquired for stabilisation purposes in accordance with the Buyback and Stabilisation Regulation, if the voting rights attached to those shares are not exercised or otherwise used to intervene in the management of the issuer.

[Note: articles 9(4), 9(5), 9(6), 9(6a), 10(c) and 13(4) of the TD]

R 5.1.4

- (1) References to a market maker are to a market maker which:
  - (a) (subject to (3) below) is authorised by the FCA or the PRA under the United Kingdom provisions which implemented MiFID;
  - (b) does not intervene in the management of the issuer concerned; and
  - (c) does not exert any influence on the *issuer* to buy such *shares* or back the *share* price.

[Note: articles 9(5) and 9(6) of the TD]

(2) A market maker relying upon the exemption for shares or financial instruments within ■ DTR 5.3.1R(1) held by it in that capacity must notify the FCA, at the latest within the time limit provided for by ■ DTR 5.8.3 R, that it conducts or intends to conduct market making activities on a particular issuer (and shall equally make such a notification if it ceases such activity).

[Note: article 6(1) of the TD implementing Directive]

(3) References to a market maker also include a third country investment firm and a credit institution when acting as a market maker and which, in relation to that activity, is subject to regulatory supervision under the laws of the *United Kingdom*.

## Aggregation of holdings

#### 5.1.4A UK

The TD Major Holdings Regulation provides that:

#### Recital 2

The thresholds for the market making and trading book exemptions should be calculated by aggregating voting rights relating to shares with voting rights related to financial instruments (that is entitlements to acquire shares and financial instruments considered to be economically equivalent to shares) in order to ensure consistent application of the principle of aggregation of all holdings of financial instruments subject to notification requirements and to prevent a misleading representation of how many financial instruments related to an issuer are held by an entity benefiting from those exemptions.

#### Article 2

#### Aggregation of holdings

For the purpose of calculation of the thresholds referred to in [■ DTR 5.1.3R(3) and (4)], holdings under United Kingdom law corresponding to Articles 9, 10 and 13 of Directive 2004/109/EC shall be aggregated.

## Aggregation of holdings in the case of a group

#### 5.1.4B UK

The TD Major Holdings Regulation provides that:

#### Recital 3

In order to provide an adequate level of transparency in the case of a group of companies, and to take into account the fact that, where a parent undertaking has control over its subsidiaries, it may influence their management, the thresholds should be calculated at group level. Therefore all holdings owned by a parent undertaking of a credit institution or investment firm and subsidiary companies should be disclosed when the total sum of the holdings reaches the notification threshold.

#### Article 3

#### Aggregation of holdings in the case of a group

For the purpose of calculation of the thresholds referred to in [■ DTR 5.1.3R(3) and (4)]in the case of a group of companies, holdings shall be aggregated at group level according to the principle laid down in [■ DTR 5.2.1R(e)].

## Certain voting rights to be disregarded (except at 5% 10% and higher thresholds)

5.1.5 R

- (1) The following are to be disregarded for the purposes of determining whether a *person* has a notification obligation in accordance with the thresholds in DTR 5.1.2 R except at the thresholds of 5% and 10% and above:
  - (a) voting rights attaching to *shares* forming part of property belonging to another which that *person* lawfully manages under an agreement in, or evidenced in, writing;

- (b) voting rights attaching to shares which may be exercisable by a person in his capacity as the operator of:
  - (i) an authorised unit trust scheme;
  - (ia) an authorised contractual scheme;
  - (ii) a recognised scheme; or
  - (iii) a UCITS scheme;
- (c) voting rights attaching to shares which may be exercisable by an
- (d) [deleted]
- (2) For the purposes of DTR 5.1.5 R (1)(a), a person ("A") may lawfully manage investments belonging to another if:
  - (a) A can manage those investments in accordance with a Part 4A permission;
  - (b) [deleted]
  - (c) A can, in accordance with section 327 of the Act, manage those investments without contravening the prohibition contained in section 19 of the Act;
  - (d) [deleted]
  - (e) A can lawfully manage those investments in a third country and would, if he were to manage those investments in the UK, require a Part 4A permission.



# 5.2 Acquisition or disposal of major proportions of voting rights

## 5.2.1 R

A *person* is an indirect holder of *shares* for the purpose of the applicable definition of *shareholder* to the extent that he is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:

(a) voting rights held by a third party with whom that person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;  (b) voting rights held by a third party under an agreement concluded with that person providing for the temporary transfer for consideration of the voting rights in question;  (c) voting rights attaching to shares which are lodged as collateral with that person provided that person controls the voting rights and declares its intention of exercising them;  (d) voting rights attaching to shares in which that person has the life interest;  (e) voting rights which are held, or may be exercised within the meaning of points (a) to (d) or, in cases (f) and (h) by a person undertaking investment management, or by a management company, by an undertaking controlled by that person;  (f) voting rights attaching to shares deposited with that person which the person can exercise at its discretion in the absence of specific instructions from the shareholders;  (g) voting rights held by a third party in his own name on behalf of that person;		Case
under an agreement concluded with that person providing for the temporary transfer for consideration of the voting rights in question;  (c) voting rights attaching to shares which are lodged as collateral with that person provided that person controls the voting rights and declares its intention of exercising them;  (d) voting rights attaching to shares in which that person has the life interest;  (e) voting rights which are held, or may be exercised within the meaning of points (a) to (d) or, in cases (f) and (h) by a person undertaking investment management, or by a management company, by an undertaking controlled by that person;  (f) voting rights attaching to shares deposited with that person which the person can exercise at its discretion in the absence of specific instructions from the shareholders;  (g) voting rights held by a third party in his own name on behalf of that	(a)	with whom that <i>person</i> has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the <i>issuer</i> in
which are lodged as collateral with that person provided that person controls the voting rights and declares its intention of exercising them;  (d) voting rights attaching to shares in which that person has the life interest;  (e) voting rights which are held, or may be exercised within the meaning of points (a) to (d) or, in cases (f) and (h) by a person undertaking investment management, or by a management company, by an undertaking controlled by that person;  (f) voting rights attaching to shares deposited with that person which the person can exercise at its discretion in the absence of specific instructions from the shareholders;  (g) voting rights held by a third party in his own name on behalf of that	(b)	under an agreement concluded with that <i>person</i> providing for the temporary transfer for consideration of
which that person has the life interest;  (e)  voting rights which are held, or may be exercised within the meaning of points (a) to (d) or, in cases (f) and (h) by a person undertaking investment management, or by a management company, by an undertaking controlled by that person;  (f)  voting rights attaching to shares deposited with that person which the person can exercise at its discretion in the absence of specific instructions from the shareholders;  (g)  voting rights held by a third party in his own name on behalf of that	(c)	which are lodged as collateral with that <i>person</i> provided that <i>person</i> controls the voting rights and declares its intention of exercising
be exercised within the meaning of points (a) to (d) or, in cases (f) and (h) by a person undertaking investment management, or by a management company, by an undertaking controlled by that person;  (f)  voting rights attaching to shares deposited with that person which the person can exercise at its discretion in the absence of specific instructions from the shareholders;  (g)  voting rights held by a third party in his own name on behalf of that	(d)	which that <i>person</i> has the life
posited with that person which the person can exercise at its discretion in the absence of specific instructions from the shareholders;  (g) voting rights held by a third party in his own name on behalf of that	(e)	be exercised within the meaning of points (a) to (d) or, in cases (f) and (h) by a person undertaking investment management, or by a management company, by an undertaking
his own name on behalf of that	(f)	posited with that <i>person</i> which the person can exercise at its discretion in the absence of specific instruc-
	(g)	his own name on behalf of that

	Case
(h)	voting rights which that person may exercise as a proxy where that person can exercise the voting rights at his discretion in the absence of specific instructions from the shareholders.

[Note: article 10 of the TD]

#### 5.2.2 G

Cases (a) to (h) in ■ DTR 5.2.1 R identify situations where a *person* may be able to control the manner in which voting rights are exercised and where, (taking account of any aggregation with other holdings) a notification to the issuer may need to be made. In the FCA's view:

- (1) Case (e) produces the result that it is always necessary for the parent undertaking of a controlled undertaking to aggregate its holding with any holding of the controlled undertaking (subject to the exemptions implicit in Case (e) and others in ■ DTR 5.4);
- (2) Case (f) includes a person carrying on investment management and which is also the custodian of shares to which voting rights are attached;
- (3) Case (g) does not result in a Unitholder in a collective investment scheme or other investment entity being treated as the holder of voting rights in the scheme property (provided always such persons do not have any entitlement to exercise, or control the exercise of, such voting rights); neither are such persons to be regarded as holding shares "indirectly";
- (4) Case (h), although referring to proxies, also describes and applies to a person undertaking investment management, and to a management company, and which is able effectively to determine the manner in which voting rights attached to shares under its control are exercised (for example through instructions given directly or indirectly to a nominee or independent custodian). Case (e) provides for the voting rights which are under the control of such a person to be aggregated with those of its parent undertaking.

#### 5.2.3

A person falling within Cases (a) to (h) is an indirect holder of shares for the purpose of the definition of shareholder. These indirect holdings have to be aggregated, but also separately identified in a notification to the issuer. Apart from those identified in the Cases (a) to (h), the FCA does not expect any other significant category "indirect shareholder" to be identified. Cases (a) to (h) are also relevant in determining whether a person is an indirect holder of financial instruments within ■ DTR 5.3.1R(1)(a) which result in an entitlement to acquire shares.

#### 5.2.4 R

■ DTR 5.1.2 R and case (c) of ■ DTR 5.2.1 R do not apply in respect of voting rights attaching to shares provided to or by the Bank of England in carrying out its functions as a monetary authority, including shares provided to or by the Bank of England under a pledge or repurchase of similar agreement for liquidity granted for monetary policy purposes or within a payments system provided:

- (1) this shall apply only for a short period following the provision of the *shares*; and
- (2) the voting rights attached to the shares during this period are not exercised.

[Note: article 11 of the TD.]

### 5.2.5 R

- (1) A *person* who is required to make a notification may, without affecting their responsibility, appoint another *person* to make the notification on his behalf.
- (2) Where two or more *persons* are required to make a notification such *persons* may, without affecting their responsibility, arrange for a single notification to be made.

[Note: article 8(3) of the TD implementing Directive.]

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Notification of voting rights arising 5.3 from the holding of certain financial instruments

- R 5.3.1
- (1) A person must make a notification in accordance with the applicable thresholds in ■ DTR 5.1.2R in respect of any financial instruments which they hold, directly or indirectly, which:
  - (a) on maturity give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to the holder's right to acquire, shares to which voting rights are attached, already issued, of an issuer; or
  - (b) are not included in (a) but which are referenced to shares referred to in (a) and with economic effect similar to that of the financial instruments referred to in (a), whether or not they confer a right to a physical settlement.

[Note: article 13(1) of the TD]

- (2) [deleted]
- (2A) [deleted]
  - (3) [deleted]
  - (4) [deleted]
  - (5) [deleted]
- 5.3.1A G [deleted]
- 5.3.2 R For the purposes of ■ DTR 5.3.1 R (1)(a):
  - (1) [deleted]
  - (2) [deleted]
  - (3) a "formal agreement" means an agreement which is binding under applicable law.

[Note: article 2(1)(q) of the TD]

5.3.2A G The FCA maintains a published indicative list of financial instruments that are subject to notification requirements according to ■ DTR 5.3.1R.

[Note: article 13(1b) of the TD]

**5.3.2B UK** The *TD Major Holdings Regulation* provides that:

Recital 8

To decrease the number of meaningless notifications to the market, the trading book exemption should apply to financial instruments held by a natural person or legal entity fulfilling orders received from clients, responding to a client's request to trade otherwise than on a proprietary basis or hedging positions arising out of such dealings.

Article 6

#### Client-serving transactions

The exemption referred to in [DTR 5.1.3R(4)] shall apply to financial instruments held by a natural person or legal entity fulfilling orders received from clients, responding to a client's request to trade otherwise than on a proprietary basis, or hedging positions arising out of such dealings.

**5.3.2C G** [deleted]

[Note: article 13(4) of the TD]

5.3.3 G

(1) For the purposes of ■ DTR 5.3.1R (1)(a), financial instruments within ■ DTR 5.3.1R(1)(a) should be taken into account in the context of notifying major holdings, to the extent that such instruments give the holder an unconditional right to acquire the underlying shares or cash on maturity. Consequently, financial instruments financial instruments within ■ DTR 5.3.1R(1)(a) should not be considered to include instruments entitling the holder to receive shares depending on the price of the underlying share reaching a certain level at a certain moment in time. Nor should they be considered to cover those instruments that allow the instrument issuer or a third party to give shares or cash to the instrument holder on maturity.

[Note: Recital 13 of the TD implementing Directive]

(2) [deleted]

5.3.3A R

The number of voting rights must be calculated by reference to the full notional amount of *shares* underlying the financial instrument except where the financial instrument provides exclusively for a cash settlement, in which case the number of voting rights must be calculated on a "delta-adjusted" basis, by multiplying the notional amount of underlying *shares* by the delta of the financial instrument. For this purpose, the holder must aggregate and notify all financial instruments relating to the same underlying *issuer*. Only long positions are to be taken into account for the calculation of voting rights. Long positions are not to be netted with short positions relating to the same underlying *issuer*.

[Note: article 13(1a) of the TD]

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#### 5.3.3B UK

The TD Major Holdings Regulation provides that:

#### Recital 4

The disclosure regime for financial instruments that have a similar economic effect to shares should be clear. Requirements to provide exhaustive details of the structure of corporate ownership should be proportionate to the need for adequate transparency in major holdings, the administrative burdens those requirements place on holders of voting rights and the flexibility in the composition of a basket of shares or an index. Therefore, financial instruments referenced to a basket of shares or an index should only be aggregated with other holdings in the same issuer when the holding of voting rights through such instruments is significant or the financial instrument is not being used primarily for investment diversification purposes.

#### Recital 5

It would not be cost-efficient for an investor to build a position in an issuer through holding a financial instrument referenced to different baskets or indices. Therefore, holdings of voting rights through a financial instrument referenced to a series of baskets of shares or indices which are individually under the established thresholds should not be accumulated.

#### Article 4

#### Financial instruments referenced to a basket of shares or an index

1. Voting rights referred to in [■ DTR 5.3.3AR] in the case of a financial instrument referenced to a basket of shares or an index shall be calculated on the basis of the weight of the share in the basket of shares or index where any of the following conditions apply:

(a) the voting rights in a specific issuer held through financial instruments referenced to the basket or index represent 1% or more of voting rights attached to shares of that issuer:

(b) the shares in the basket or index represent 20% or more of the value of the securities in the basket or index.

2. Where a financial instrument is referenced to a series of baskets of shares or indices, the voting rights held through the individual baskets of shares or indices shall not be accumulated for the purpose of the thresholds set out in paragraph 1.

#### 5.3.3C UK

The TD Major Holdings Regulation provides that:

#### Recital 6

Financial instruments which provide exclusively for a cash settlement should be accounted for on a delta-adjusted basis, with cash position having delta 1 in the case of financial instruments having a linear, symmetric pay-off profile in line with the underlying share and using a generally accepted standard pricing model in the case of financial instruments which do not have a linear, symmetric pay-off profile in line with the underlying share.

#### Recital 7

In order to ensure that information about the total number of voting rights accessible to the investor is as accurate as possible, delta should be calculated daily taking into account the last closing price of the underlying share.

#### Article 5

Financial instruments providing exclusively for a cash settlement

- 1.The number of voting rights referred to in [■ DTR 5.3.3AR] relating to financial instruments which provide exclusively for a cash settlement, with a linear, symmetric pay-off profile with the underlying share shall be calculated on a delta-adjusted basis with cash position being equal to 1.
- 2.The number of voting rights relating to an exclusively cash-settled financial instrument without a linear, symmetric pay-off profile with the underlying share shall be calculated on a delta-adjusted basis, using a generally accepted standard pricing model.
- 3.A generally accepted standard pricing model shall be a model that is generally used in the finance industry for that financial instrument and that is sufficiently robust to take into account the elements that are relevant to the valuation of the instrument. The elements that are relevant to the valuation shall include at least all of the following:
- (a)interest rate;
- (b) dividend payments;
- (c)time to maturity;
- (d)volatility;
- (e)price of underlying share.
- 4. When determining delta the holder of the financial instrument shall ensure all of the following:
- (a)that the model used covers the complexity and risk of each financial instrument;
- (b)that the same model is used in a consistent manner for the calculation of the number of voting rights of a given financial instrument.
- 5.Information technology systems used to carry out the calculation of delta shall ensure consistent, accurate and timely reporting of voting rights.
- 6.The number of voting rights shall be calculated daily, taking into account the last closing price of the underlying share. The holder of the financial instrument shall notify the issuer when that holder reaches, exceeds or falls below the applicable thresholds provided for in [ DTR 5.1.2R].
- The holder of financial instruments within DTR 5.3.1R(1)(a), and, to the extent relevant, financial instruments within DTR 5.3.1R(1)(b), is required to aggregate and, if necessary, notify all such instruments as relate to the same underlying *issuer*.

[Note: article 13(1) of the TD]

- A person making a notification in accordance with DTR 5.1.2R must, if their holding includes financial instruments within DTR 5.3.1R(1):
  - (1) include a breakdown by type of financial instruments held in accordance with DTR 5.3.1R(1)(a) and financial instruments held in accordance with DTR 5.3.1R(1)(b); and
  - (2) distinguish between the financial instruments which confer a right to:
    - (a) physical settlement; and
    - (b) cash settlement.

[Note: article 13(1) of the TD]



#### 5.4 **Aggregation of managed holdings**

5.4.1

- R
- (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 R

- (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  $\blacksquare$  DTR 5.3.1R, it must notify to the FCA only the list referred to in paragraph (1) of  $\blacksquare$  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

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 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 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.

## 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]

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#### 5.5 Acquisition or disposal by issuer of shares

- 5.5.1 An issuer of shares must, if it acquires or disposes of its own shares, either itself or through a person acting in his own name but on the issuer's behalf, make public the percentage of voting rights attributable to those shares it holds as a result of the transaction as a whole, as soon as possible, but not later than four trading days following such acquisition or disposal where that percentage reaches, exceeds or falls below the thresholds of 5% or 10% of the voting rights.
- 5.5.1A R ■ DTR 5.5.1R does not apply to a third-country issuer that falls within ■ DTR 5.11.4R.
- 5.5.2 R The percentage shall be calculated on the basis of the total number of *shares* to which voting rights are attached.

[Note: article 14 of the TD].

G 5.5.3 Additional requirements in relation to a *listed company* which purchases its own equity shares are contained in ■ LR 12.4.6 R.



## 5.6 Disclosures by issuers

- An *issuer* must, at the end of each calendar month during which an increase or decrease has occurred, disclose to the public:
  - (1) the total number of voting rights and capital in respect of each class of *share* which it issues.

[Note: article 15 of the TD]; and

- (2) the total number of voting rights attaching to *shares* of the *issuer* which are held by it in treasury.
- (1) Notwithstanding DTR 5.6.1 R, if a relevant increase or decrease in the total number of voting rights of the kind described in (2) occurs, an issuer must disclose to the public the information in DTR 5.6.1R (1) and (2) as soon as possible and in any event no later than the end of the business day following the day on which the increase or decrease occurs.
  - (2) For the purpose of (1), a relevant increase or decrease is any increase or decrease in the total number of voting rights produced when an *issuer* completes a transaction unless its effect on the total number of voting rights is immaterial when compared with the position before completion.
- **5.6.1C** R DTR 5.6.1R does not apply to a third-country *issuer* that falls within DTR 5.11.4R.
- 5.6.2 The disclosure of the total number of voting rights should be in respect of each class of *share* which is admitted to trading on a *regulated* or *prescribed* market.
- Responsibility for all information drawn up and made public in accordance with DTR 5.6.1 R and DTR 5.6.1AR lies with the *issuer*.



#### 5.7 **Notification of combined holdings**

- 5.7.1 A person making a notification in accordance with ■ DTR 5.1.2 R must do so by reference to each of the following:
  - (1) the aggregate of all voting rights which the person holds as shareholder and as the direct or indirect holder of financial instruments falling within ■ DTR 5.3.1R(1);
  - (2) the aggregate of all voting rights held as direct or indirect shareholder (disregarding for this purpose holdings of financial instruments); and
  - (3) the aggregate of all voting rights held as a result of direct and indirect holdings of financial instruments falling within ■ DTR 5.3.1R(1). [Note: article 13a(1) of the TD]
  - (4) [deleted]
- 5.7.1A Voting rights relating to financial instruments within ■ DTR 5.3.1R(1) that have already been notified in accordance with ■ DTR 5.1.2R must be notified again when the person has acquired the underlying shares and such acquisition results in the total number of voting rights attached to shares issued by the same issuer reaching or exceeding the thresholds laid down by ■ DTR 5.1.2R.

[Note: article 13a(2) of the TD]

5.7.2 G The effect of ■ DTR 5.7.1 R is that a person may have to make a notification if the overall percentage level of his voting rights remains the same but there is a notifiable change in the percentage level of one or more of the categories of voting rights held.



# 5.8 Procedures for the notification and disclosure of major holdings

- 5.8.1 R A notification given in accordance with DTR 5.1.2 R shall include the following information:
  - (1) the resulting situation in terms of voting rights;
  - (2) the chain of *controlled undertakings* through which voting rights are effectively held, if applicable;
  - (3) the date on which the threshold was reached or crossed; and
  - (4) the identity of the *shareholder*, even if that *shareholder* is not entitled to exercise voting rights under the conditions laid down in DTR 5.2.1 R and of the *person* entitled to exercise voting rights on behalf of that *shareholder*.
- 5.8.2 R
- (1) A notification required of voting rights arising from the holding of financial instruments must include the following information:
  - (a) the resulting situation in terms of voting rights;
  - (b) if applicable, the chain of *controlled undertakings* through which financial instruments are effectively held;
  - (c) the date on which the threshold was reached or crossed;
  - (d) for instruments with an exercise period, an indication of the date or time period where *shares* will or can be acquired, if applicable
  - (e) date of maturity or expiration of the instrument;
  - (f) identity of the holder; and
  - (g) name of the underlying issuer.
- (2) The notification must be made to the *issuer* of each of the underlying *shares* to which the financial instrument relates and, in the case of *shares* admitted to trading on a *regulated market*, to the *FCA*.
- (3) If a financial instrument relates to more than one underlying *share*, a separate notification shall be made to each *issuer* of the underlying *shares*.
- (4) [deleted]

[Note: articles 11(3), (4) and (5) of the TD implementing Directive]

5.8.3

The notification to the *issuer* shall be effected as soon as possible, but not later than four trading days in the case of a non-UK issuer and two trading days in all other cases, after the date on which the relevant person:

- (1) learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect; or
- (2) is informed about the event mentioned in DTR 5.1.2 R (2).

And for the purposes of (1) above a person shall, in relation to a transaction to which he is a party or which he has instructed, be deemed to have knowledge of the acquisition, disposal or possibility to exercise voting rights no later than two trading days following the transaction in question and where a transaction is conditional upon the approval by public authorities of the transaction or on a future uncertain event the occurrence of which is outside the control of the parties to the agreement, the parties are deemed to have knowledge of the acquisition, disposal or possibility of exercising voting rights only when the relevant approvals are obtained or when the event happens.

[Note: articles 12(1), and 12(2) of the TD and article 9 of the TD implementing Directive]

5.8.4 R

- (1) The notification obligation following transactions of a kind mentioned in DTR 5.2.1 R are individual obligations incumbent upon each direct shareholder or indirect shareholder mentioned in ■ DTR 5.2.1 R or both if the proportion of voting rights held by each party reaches, exceeds or falls below an applicable threshold.
- (2) In the circumstances in DTR 5.2.1 R Case (h) if a *shareholder* gives the proxy in relation to one shareholder meeting, notification may be made by means of a single notification when the proxy is given provided it is made clear in the notification what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights discretion.
- (3) If in the circumstances in DTR 5.2.1 R Case (h) the proxy holder receives one or several proxies in relation to one shareholder meeting, notification may be made by means of a single notification on or after the deadline for receiving proxies provided that it is made clear in the notification what the resulting situation in terms if voting rights will be when the proxy may no longer exercise the voting rights at its discretion.
- (4) When the duty to make notification lies with more than one person, notification may be made by means of a single common notification but this does not release any of those persons from their responsibilities in relation to the notification.

[Note: article 8 of the TD implementing Directive]

5.8.5 G It may be necessary for both the relevant shareholder and proxy holder to make a notification. For example, if a direct holder of shares has a notifiable holding of voting rights and gives a proxy in respect of those rights (such

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that the recipient has discretion as to how the votes are cast) then for the purposes of ■ DTR 5.1.2 R this is a disposal of such rights giving rise to a notification obligation. The proxy holder may also have such an obligation by virtue of his holding under ■ DTR 5.2.1 R. Separate notifications will not however be necessary provided a single notification (whether made by the direct holder of the shares or by the proxy holder) makes clear what the situation will be when the proxy has expired. Where a proxy holder receives several proxies then one notification may be made in respect of the aggregated voting rights held by the proxy holder on or as soon as is reasonably practicable following the proxy deadline. Unless it discloses what the position will be in respect of each proxy after the proxies have expired, such a notification will not relieve any direct holder of the shares of its notification obligation (if there is a notifiable disposal). A proxy which confers only minor and residual discretions (such as to vote on an adjournment) will not result in the proxy holder (or shareholder) having a notification obligation.

An undertaking is not required to make a notification if instead it is made by its parent undertaking or, where the parent undertaking is itself a controlled undertaking, by its own parent undertaking.

[Note: article 12(3) of the TD]

Voting rights must be calculated on the basis of all the *shares* to which voting rights are attached even if the exercise of such rights is suspended and shall be given in respect of all *shares* to which voting rights are attached.

[Note: article 9(1) of the TD]

The number of voting rights to be considered when calculating whether a threshold is reached, exceeded or fallen below is the number of voting rights in existence according to the *issuer*'s most recent disclosure made in accordance with DTR 5.6.1 R and DTR 5.6.1 A R but disregarding voting rights attached to any treasury *shares* held by the *issuer* (in accordance with the *issuer*'s most recent disclosure of such holdings).

[[Note: article 9(2) of the TD and article 11(3) of the TD implementing Directive]

- **5.8.9 G** [deleted]
- A notification in relation to *shares* admitted to trading on a *regulated* market, must be made using the form TR1 available in electronic format at the *FCA*'s website at http://www.fca.org.uk.
- In determining whether a notification is required a *person*'s net (direct or indirect) holding in a *share* (and of relevant financial instruments) may be assessed by reference to that *person*'s holdings at a point in time up to midnight of the day for which the determination is made (taking account of acquisitions and disposals executed during that day).

5.8.12



- (1) An issuer not falling within (2) must, in relation to shares admitted to trading on a regulated market, on receipt of a notification as soon as possible and in any event by not later than the end of the trading day following receipt of the notification make public all of the information contained in the notification.
- (2) A non-UK issuer and any other issuers whose shares are admitted to trading on a prescribed (but not a regulated) market must, on receipt of a notification, as soon as possible and in any event by not later than the end of the third trading day following receipt of the notification, make public all of the information contained in the notification.
- (3) DTR 5.8.12R(2) does not apply to a third country issuer that falls within ■ DTR 5.11.4R.

[Note: article 12(6) of the TD]



# 5.9 Filing of information with competent authority

5.9.1 R

- (1) A person making a notification to an issuer to which this chapter applies must, if the notification relates to shares admitted to trading on a regulated market, at the same time file a copy of such notification with the FCA.
- (2) The information to be filed with the FCA must include a contact address of the person making the notification (but such details must be in a separate annex and not included on the form which is sent to the issuer).

[Note: article 19(3) of the TD]

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Use of electronic means for 5.10 notifications and filing

5.10.1

Information filed with the FCA for the purposes of the chapter must be filed using electronic means.



## 5.11 Third country issuers

5.11.1 R

An *issuer* whose registered office is in a *third country* will be treated as meeting equivalent requirements to those set out in ■ DTR 5.8.12 R (2) (*issuer* to make public notifications of major shareholdings by close of third day following receipt) provided that the period of time within which the notification of the major holdings is to be effected to the *issuer* and is to be made public by the *issuer* is in total equal to or shorter than seven *trading days*.

[Note: article 19 of the TD implementing Directive]

5.11.2 R

An *issuer* whose registered office is in a *third country* will be treated as meeting equivalent requirements in respect of treasury *shares* to those set out in ■ DTR 5.5.1 R provided that:

- (1) if the *issuer* is only allowed to hold up a maximum of 5% of its own *shares* to which voting rights are attached, a notification requirement is triggered under the law of the *third country* whenever this the maximum threshold of 5% of the voting rights is reached or crossed;
- (2) if the *issuer* is allowed to hold up to maximum of between 5% and 10% of its own *shares* to which voting rights are attached, a notification requirement is triggered under the law of the *third* country whenever this maximum threshold and or the 5% threshold of the voting rights are reached or crossed;
- (3) if the *issuer* is allowed to hold more than 10% of its own *shares* to which voting rights are attached, a notification requirement is triggered under the law of the *third country* whenever the 5% or 10% thresholds of the voting rights are reached or crossed. Notification above the 10% threshold is not required for this purpose.

[Note: article 20 of the TD implementing Directive]

5.11.3 F

An *issuer* whose registered office is in a *third country* will be treated as meeting equivalent requirements to those set out in ■ DTR 5.6.1 R (Disclosure by *issuers* of total voting rights) provided that the *issuer* is required under the law of the *third country* to disclose to the public the total number of voting rights and capital within 30 calendar days after an increase or decrease of such total number has occurred.

[Note: article 21 of the TD implementing Directive]

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- 5.11.4 An issuer whose registered office is in a third country is exempted from ■ DTR 5.5.1R, ■ DTR 5.6.1R and ■ DTR 5.8.12R(2) if:
  - (1) the law of the third country in question lays down equivalent requirements; or
  - (2) the issuer complies with requirements of the law of a third country that the FCA considers as equivalent.

[Note: article 23(1) of the TD]

- G 5.11.5 The FCA maintains a published list of third country, for the purpose of ■ DTR 5.11.4R, whose laws lay down requirements equivalent to those imposed upon issuers by this chapter, or where the requirements of the law of that third country are considered to be equivalent by the FCA. Such issuers remain subject to the following requirements of ■ DTR 6:
  - (1) the filing of information with the FCA;
  - (2) the language provisions; and
  - (3) the dissemination of information provisions.
- 5.11.6 R [deleted]