

Chapter 5

Vote Holder and Issuer Notification Rules

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

- 5.3.1 **R** (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*]

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].

5.3.4 **R** 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*]

5.3.5 **R** 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*]