

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* under the conditions laid down in 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 under *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 4(1), point 8, of *MiFID*, 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 Article 13 of the TD, 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]

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 be 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 authorisation in accordance with Article 6 (1) of the *UCITS directive* or with regard to portfolio management under point 4 of section A of Annex 1 to *MiFID* if it had its registered office or, only in the case of an *investment firm*, its head office within the *EEA*, 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 **R** 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*]