Disclosure Guidance and Transparency Rules sourcebook

Chapter 5

Vote Holder and Issuer Notification Rules



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

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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

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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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