

Transparency Directive

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Transparency Directive

Chapter 1

Commission Delegated Regulation (EU) 2015/761

Preamble

THE EUROPEAN COMMISSION,
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Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, and in particular the third subparagraph of Article 9(6b), the fourth subparagraph of Article 13(1a) and the fourth subparagraph of Article 13(4) thereof,

01/01/2021

Whereas:

(1) Directive 2004/109/EC establishes transparency requirements relating to information about issuers whose securities are admitted to trading on a regulated market. That Directive also requires development of regulatory technical standards to ensure consistent application of the regime for notification of the acquisition or disposal of major holdings and related exemptions.

(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.

(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.

(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 where the holding of voting rights through such instruments is significant or the financial instrument is not being used primarily for investment diversification purposes.

(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.

(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.

(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.

(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.

(9) The provisions in this Regulation are closely linked, since they deal with the requirements relating to notification of major holdings in listed companies. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, including investors that are non-Union residents, it is desirable to include certain of the regulatory technical standards required by Directive 2004/109/EC in a single Regulation.

(10) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(11) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

(12) The application of this Regulation should be deferred in order to align its date of application with the date prescribed for the transposition of Directive 2013/50/EU of the European Parliament and of the Council in Article 4(1) of that Directive,

HAS ADOPTED THIS REGULATION:

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Article -1 Definitions

1. For the purposes of this Regulation the following definitions apply:

(a) ‘the Disclosure Guidance and Transparency Rules sourcebook’ means the Disclosure Guidance and Transparency Rules sourcebook made by the Financial Conduct Authority under the Financial Services and Markets Act 2000, as it has effect on IP completion day;

(b) ‘issuer’ means a natural person, or a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a UK regulated market. In the case of depository receipts admitted to trading on a UK regulated market, the issuer means the issuer of the securities represented, whether or not those securities are admitted to trading on a UK regulated market;

(c) ‘securities’ means transferable securities as defined in Article 2(1)(24) of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, with the exception of money market instruments as defined in Article 2(1)(25A) of that Regulation having a maturity of less than 12 months;

(d) ‘UK regulated market’ has the meaning given in Article 2(1)(13A) of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018;

‘IP completion day’ has the meaning given in the European Union (Withdrawal) Act 2020.



Article 1 Subject matter

This Regulation lays down detailed rules to specify:

- (a) the method of calculating any percentage threshold applying for the purposes of rule 5.1.3 of the Disclosure Guidance and Transparency Rules sourcebook;
- (b) the method for calculating the number of voting rights in the case of financial instruments referenced to a basket of shares or an index;
- (c) the methods for determining delta for the purposes of calculating voting rights relating to financial instruments which provide exclusively for a cash settlement;
- (d) the cases in which the exemptions laid down in rules 5.1.3, 5.4.1, 5.4.2 and 5.8.6 of the Disclosure Guidance and Transparency Rules sourcebook apply to financial instruments held by a person fulfilling orders received from clients or responding to a client's requests to trade otherwise than on a proprietary basis, or hedging positions arising out of such dealings.



Article 2 Aggregation of holdings

For the purpose of calculation of the thresholds referred to in paragraphs (3) and (4) of rule 5.1.3 of the Disclosure Guidance and Transparency Rules sourcebook, holdings under UK law corresponding to Articles 9, 10 and 13 of Directive 2004/109/EC shall be aggregated.



Article 3 Aggregation of holdings in the
case of a group

For the purpose of calculation of the thresholds referred to in paragraphs (3) and (4) of rule 5.1.3 of the Disclosure Guidance and Transparency Rules sourcebook in the case of a group of companies, holdings shall be aggregated at group level according to the principle laid down in paragraph (e) of rule 5.2.1 of the Disclosure Guidance and Transparency Rules sourcebook.



Article 4 Financial instruments referenced to a basket of shares or an index

(1) Voting rights referred to in rule 5.3.3A of the Disclosure Guidance and Transparency Rules sourcebook 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 the 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.

Article 5 Financial instruments providing exclusively for a cash settlement

(1) The number of voting rights referred to in rule 5.3.3A of the Disclosure Guidance and Transparency Rules sourcebook 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 rule 5.1.2 of the Disclosure Guidance and Transparency Rules source-book.



Article 6 Client-serving transactions

The exemption referred to in paragraph (4) of rule 5.1.3 of the Disclosure Guidance and Transparency Rules sourcebook 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.



Article 7 Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 26 November 2015.

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Signature

01/01/2021

This Regulation shall be binding in its entirety and directly applicable in all Member States.

01/01/2021

Done at Brussels, 17 December 2014.

01/01/2021

For the Commission

01/01/2021

The President

01/01/2021

Jean-Claude JUNCKER