

Chapter 5

Vote Holder and Issuer Notification Rules

5.1 Notification of the acquisition or disposal of major shareholdings

5.1.1

R

In this chapter:

- (1) references to an "*issuer*", in relation to *shares* admitted to trading on a *regulated market*, are to an *issuer* whose *Home State* is the *United Kingdom*;
- (2) references to a "*non-UK issuer*" are to an *issuer* whose *shares* are admitted to trading on a *regulated market* and whose *Home State* is the *United Kingdom* 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

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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 an EEA State 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

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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%;
and
 - (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 *Buy-back 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*]

5.1.4

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- (1) References to a *market maker* are to a *market maker* which:
- (a) (subject to (3) below) is authorised by its *Home State* under *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 *competent authority* of the *Home Member State* of the *issuer*, 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 an *EEA State*.

Aggregation of holdings

5.1.4A

EU

Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings 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 5% threshold referred to in Article 9(5) and (6) of Directive 2004/109/EC, holdings under Articles 9, 10 and 13 of that Directive shall be aggregated.

Aggregation of holdings in the case of a group

5.1.4B

EU

Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings 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 5% threshold referred to in Article 9(5) and (6) of Directive 2004/109/EC in the case of a group of companies, holdings shall be aggregated at group level according to the principle laid down in Article 10(e) of that Directive.

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

5.1.5

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(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 *ICVC*.
 - (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) A is an *EEA* firm other than one mentioned in sub-paragraphs (c) or (e) of paragraph 5 of Schedule 3 to the *Act* and can manage those *investments* in accordance with its *EEA* authorisation;
 - (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) A can lawfully manage those *investments* in another *EEA State* and would, if he were to manage those *investments* in the *UK*, require a *Part 4A permission*; or
 - (e) A can lawfully manage those *investments* in a *non-EEA State* 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

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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:

Case	
(a)	voting rights held by a third party 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 question;
(b)	voting rights held by a third party under an agreement concluded with that <i>person</i> providing for the temporary transfer for consideration of the voting rights in question;
(c)	voting rights attaching to <i>shares</i> 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 them;
(d)	voting rights attaching to <i>shares</i> in which that <i>person</i> 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 <i>person</i> undertaking investment management, or by a <i>management company</i> , by an undertaking controlled by that <i>person</i> ;
(f)	voting rights attaching to <i>shares</i> deposited with that <i>person</i> which the person can exercise at its discretion in the absence of specific instructions from the <i>shareholders</i> ;
(g)	voting rights held by a third party in his own name on behalf of that <i>person</i> ;

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

[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

G

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

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■ 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 a member of the European System of Central Banks in carrying out their functions as monetary authorities, including *shares* provided to or by any such member 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

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- (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.]

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

5.3.1

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- (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** An indicative list of financial instruments that are subject to notification requirements according to article 13(1b) of the *TD* is published by *ESMA*.
- [Note: article 13(1b) of the *TD*]
- 5.3.2B **EU** Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings 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 Article 9(6) of Directive 2004/109/EC 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** The exemption referred to in article 9(6) of Directive 2004/109/EC is set out in **■ DTR 5.1.3R(4)**.
- [Note: article 13(4) of the *TD*]
- 5.3.3 **G**
- (1) For the purposes of **■ DTR 5.3.1R (1)(a)** and to give effect to Directive 2004/109/EC (TD), 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 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

EU

Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings 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 Article 13(1a)(a) of Directive 2004/109/EC 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

EU

Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings 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 Article 13(1a)(b) of Directive 2004/109/EC 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 thresholds provided for in Article 9(1) of Directive 2004/109/EC.

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

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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

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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

R

- (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 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*]



5.5 Acquisition or disposal by issuer of shares

- 5.5.1** **R** 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].
- 5.5.3** **G** 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

- 5.6.1** **R** 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.
- 5.6.1A** **R**
- (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.
- 5.6.1B** **G** In relation to the obligation in **■ DTR 5.6.1A R**, it is for an *issuer* to assess whether the effect on the total number of voting rights is immaterial. In the *FCA's* view an increase or decrease of 1% or more is likely to be material, both to the *issuer* and to the public.
- 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** **G** 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*.
- 5.6.3** **R** 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** **R** 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** **R** 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 each *competent authority* of the *Home States* of such *issuers*.
- (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

R

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 of 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

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.

5.8.6 **R** 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*]

5.8.7 **R** 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*]

5.8.8 **R** 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 5.6.1A 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** The *FCA* provides a link to a calendar of *trading days* through its website at <http://www.fca.org.uk> which applies in the *United Kingdom* for the purposes of this chapter.

[Note: article 7 of the *TD implementing Directive*]

5.8.10 **R** 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>.

5.8.11 **R** 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

R

- (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*]



**5.10 Use of electronic means for
notifications and filing**

5.10.1

R

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

5.11 Non EEA State issuers

5.11.1 **R** An *issuer* whose registered office is in a *non-EEA State* 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 *non-EEA State* 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 *non-EEA state* 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 *non-EEA state* 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 **R** An *issuer* whose registered office is in a *non-EEA State* 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 *non-EEA State* 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]

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

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

- 5.11.5** **G** The *FCA* maintains a published list of *non-EEA States*, for the purpose of article 23.1 of the *TD*, whose laws lay down requirements equivalent to those imposed upon *issuers* by this chapter, or where the requirements of the law of that *non-EEA State* 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]

