



FSA consultation on the Transparency Directive

NOTIFICATION OF MAJOR SHAREHOLDINGS

The Financial Services Authority (FSA) has published a consultation paper on implementation of the EU Transparency Directive (TD) in the UK.

This note focuses on the proposed changes to the current UK regime for notification of major shareholdings, which are to take effect on 20 January 2007. (The FSA proposals also cover periodic financial reporting by issuers and dissemination and storage of regulated information. A note covering those other issues is available on request.)

The disclosure provisions

- At present, the Companies Act 1985 requires a person to disclose their interest in shares in two distinct situations: (i) if their interest exceeds a particular threshold, generally 3 per cent, or their interest then falls below that level or increases to or beyond another whole percentage point, or the nature of it changes (the disclosure provisions); or (ii) if they receive a notice from the issuer requiring disclosure (the investigation provisions).
- Under the Company Law Reform Bill, the disclosure provisions of the Companies Act will be replaced by provisions in the FSA's rules. The FSA will assume responsibility for policing this regime.
- Breaching these requirements will no longer be a criminal offence, but will be punishable with civil sanctions by the FSA.
- The TD requirements differ from the Companies Act as regards their issuer scope, the definition of notifiable interests, the notification thresholds, the exemptions and the notification deadlines. The FSA is proposing to copy out the TD provisions but also to retain certain super-equivalent aspects of the current regime.

Issuer scope

- The TD requires the disclosure regime to apply to shareholdings in all companies with shares admitted to trading on a 'regulated market' (such as the Domestic Market or the 'regulated market' segments of the International Retail Service, the International Order Book or the International Bulletin Board of the

London Stock Exchange), and for which the UK is their home member state.

- The regime will therefore need to apply for the first time to shareholdings in *non-UK* companies that meet the criteria referred to in the previous bullet.
- It is proposed that the regime will also continue to apply to shareholdings in UK plcs whose shares are admitted to trading on an 'exchange-regulated market' (such as AIM and OFEX). The UK regime would be super-equivalent to the TD in this respect. However, it is proposed that the regime will no longer apply to shares in UK plcs which are not traded on a 'regulated' or 'exchange-regulated' market.

Notifiable interests

- Although the overall effect of the TD and current regime is broadly similar, the TD identifies notifiable interests by reference to holdings of voting rights, whereas the current Companies Act regime uses the concept of an 'interest in shares'. This and other differences of detail may have significant practical effects.
- The TD provides exemptions for shares held:
 - for the sole purpose of clearing and settling within the T+3 settlement cycle. (The FSA considers that this applies only to central counterparty clearing houses);
 - by a custodian which can only exercise voting rights under instructions;
 - by a market maker which (a) is authorised under the Directive on Markets in Financial Instruments (MiFID); (b) does not intervene in the management

- of the issuer; and (c) does not exert pressure on the issuer to buy back shares or to back the share price. This exemption applies only in respect of holdings of less than 10 per cent, and it is unclear whether it will cover principal traders on the Stock Exchange Electronic Trading Service (SETS); and
 - in the trading book of an investment firm or credit institution, provided they do not exceed the 5 per cent threshold and the firm ensures the voting rights are not used to intervene in the management of the issuer – trading book interests up to this level do not have to be included when calculating an aggregate interest.
- The TD does not contain a specific exemption for investment managers. Their interests will therefore be disclosable at the TD thresholds (5 per cent, 10 per cent, etc – see below). Provided certain conditions are met, however, their interests do not have to be aggregated with interests of other entities in their group.
 - The TD does not treat a bare right to call for delivery of shares as a holding of voting rights. However, the FSA proposes to retain this aspect of the existing regime so that under the new regime, a significant shareholder that lends shares will not have to notify those transactions as they will leave its net holding of voting rights unchanged.
 - The FSA is not proposing to count pure economic interests in shares (such as long contracts for difference (CFD) positions) as holdings of voting rights, although it is asking for views on this issue.

Disclosure thresholds

- The TD disclosure thresholds are in many respects more lenient than those under the Companies Act, applying only at the 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent and 75 per cent levels.
- The FSA is proposing generally to retain the current more stringent current notification thresholds (ie usually 3 per cent and each higher whole percentage point), but only the TD thresholds will apply in relation to non-UK issuers.

Making a notification

- Notification will in future need to be made to the FSA as well as directly to the company. The company is obliged to publicise the information to the market.
- Notifications will need to be made in a standardised format.
- The FSA is proposing to keep the current notification deadline for UK plcs – two business days from the trade date for a shareholder to notify an issuer – and to allow the following business day for the issuer to notify an RIS. Longer deadlines will apply in respect of non-UK companies.

The investigation provisions

- Implementation of the TD does not require any changes to the investigation provisions, and the government is not proposing any such changes. It is carrying over the existing investigation provisions substantially unchanged from the Companies Act 1985 into the Company Law Reform Bill.
- Although superficially attractive, this approach will result in differences of conceptual framework and terminology between the disclosure provisions and the investigations provisions. These differences could make compliance very complex and would be likely to have burdensome practical implications for firms (for example regarding systems design).

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