

# Proposals to promote shareholder engagement: Feedback to CP19/7 and final rules

**Policy Statement**

PS19/13

May 2019

## This relates to

Consultation Paper 19/7  
which is available on our website at  
[www.fca.org.uk/publications](http://www.fca.org.uk/publications)

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# 1 Summary

- 1.1** This Policy Statement (PS) follows our Consultation Paper Consultation on proposals to improve shareholder engagement (CP19/7).
- 1.2** It summarises the feedback we received to the consultation, which closed on 27 March, and our response to it. It also sets out the final rules.
- 1.3** CP19/7 set out our proposals to implement requirements of the revised Shareholder Rights Directive (SRD II) as they apply to life insurers and asset managers that we regulate, and to issuers in respect of certain transactions they enter into with a related party (Related Party Transactions or RPTs).<sup>1</sup>
- 1.4** SRD II aims to promote effective stewardship and long term investment decision making. It sets requirements in several areas, including transparency of engagement policies and investment strategies across the institutional investment community. There are also requirements for the approval and disclosure of RPTs. Our new rules come into force on 10 June, which is the deadline to implement the Directive.

## Who this affects

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- 1.5** Our final rules and guidance will apply to regulated life insurers, asset managers, and companies with shares admitted to trading on a regulated market, all of whom will be directly affected by these proposals.
- 1.6** Consumers and retail investors may also wish to be informed about these proposals.

## The wider context of this Policy Statement

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- 1.7** SRD II is one of a series of actions launched by the European Commission to promote better shareholder engagement and improve transparency in the ownership of companies. It follows the Commission's analysis of shortcomings in corporate governance during the financial crisis. This analysis identified short termism and insufficient engagement by shareholders as key issues.
- 1.8** SRD II requires asset owners and asset managers to make disclosures about their long term investment strategies, their arrangements with each other and their engagement with the companies they invest in. The new rules seek to improve transparency by enhancing the flow of information across the institutional investment community, and by promoting common stewardship objectives between institutional investors and asset managers.
- 1.9** The Directive also recognises that certain persons (related parties) may have an influence on companies they invest in, and that the nature of transactions with related

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<sup>1</sup> The Directive uses the definition of a related party in International Accounting Standards 24 (IAS 24).

parties may affect shareholders' assessment of company valuation. The requirements build on the accounting framework set under International Financial Reporting Standards. SRD II requires companies with shares admitted to trading on regulated markets to disclose and have other safeguards in place for material transactions with related parties.

- 1.10** Our approach to implementing SRD II in these areas should be seen in the context of broader work on stewardship, as set out in:
- our Discussion Paper on Building an effective regulatory framework for stewardship (DP19/1), issued jointly with the Financial Reporting Council (FRC), and
  - the FRC's consultation on revisions to the Stewardship Code.
- 1.11** The rules to promote disclosure on life insurers and asset managers' engagement and investment strategies set out in this document establish an important baseline for stewardship actions. But we need to consider carefully if and how we build on this baseline to create the right conditions and incentives for effective stewardship.
- 1.12** In DP19/1, we sought input on what constitutes effective stewardship, the challenges in delivering an effective regulatory framework for stewardship and how to strike the right balance between regulatory rules and voluntary codes of best practice.
- 1.13** We will consider the responses to DP19/1 in the coming weeks and months and develop a Feedback Statement later this year setting out potential next steps to be taken over time to address any remaining impediments to effective stewardship. In considering next steps, we appreciate that it may take time to embed SRD II, the revised Stewardship Code and some of the related initiatives in the sustainable finance space (see below).
- 1.14** We also recognise that firms should not be expected to exercise stewardship in an identical way, or to the same intensity. Each firm will have a clear and stated purpose, which shapes its offering to clients and beneficiaries. This purpose will drive investment objectives and investment strategy, flowing through to how the firm prioritises its engagements with issuers, how it exercises oversight and challenge, and how it holds issuers to account. To reflect this, our approach is not to be too prescriptive and to allow for different approaches to stewardship to develop over time.
- 1.15** We also note implementing measures taken by other regulators and government departments, as referenced in DP19/1 and in CP19/7, including in relation to occupational pension schemes, proxy advisors and directors' remuneration. Where relevant, we have sought to maintain consistency with these other regulations.
- 1.16** We also have several sustainable finance workstreams underway, which are closely related to our work on stewardship. These aim to ensure that financial services markets work well when responding to the challenges of climate change:
- In October 2018, we published a Discussion Paper asking for views on where the FCA should focus our efforts, including climate-related disclosure requirements, taxonomy, standardised reporting, innovation and green finance, and industry engagement. A broad range of stakeholders have responded to our questions and we plan to publish a feedback statement in due course.

- We have established a new, joint FCA and Prudential Regulation Authority (PRA) Climate Financial Risk Forum to look at climate-related financial risks, share best practice and provide intellectual leadership in this emerging field.
- We aim to promote green finance innovation. We launched the Green FinTech Challenge in October 2018, which will support a selection of firms developing innovative products and services to help the UK transition to a greener economy.

**1.17** In April 2019, we consulted (in [CP19/15](#)) on extending the remit of Independent Governance Committees (IGCs). IGCs were introduced in 2015 to oversee the value for money of providers' workplace personal pension schemes. We are proposing new duties for IGCs which will include the duty to report on a firm's approach to and implementation of Environmental Social and Governance considerations (so called 'ESG' factors), member concerns and stewardship policies. Requiring IGCs to report on a firm's approach to stewardship will encourage providers to be more proactive and innovative in how they engage with fund managers and underlying investee companies.

## How it links to our objectives

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**1.18** Implementing SRD II will promote long term thinking and shareholder engagement, contributing to the FCA's strategic objective to ensure that relevant markets function well, and to our three operational objectives: market integrity; consumer protection; and effective competition:

- Better transparency and greater disclosure will foster better information for stakeholders, helping markets work well.
- Market integrity would be supported through better engagement by asset owners. It would also improve transparency in how they, and asset managers, are taking an active interest in the decisions made by the governance bodies of the issuer companies in which they invest. Stewardship provides a challenge to companies to run themselves better and to ensure the interests of those investing and those they are investing for are better aligned. This, in turn, can contribute to the long term efficiency and effectiveness of capital allocation, benefitting investors and society.
- Effective stewardship supports consumers by better aligning incentives across the institutional investment community with the long term interests of consumers of financial services. Consumers will also benefit from better information flow across the institutional investment community about how firms engage with issuers to promote their interests.
- Developing a market for stewardship would also improve competition in consumers' interests by encouraging firms to compete to deliver high-quality investment decisions, oversight of assets and engagement with, and challenge of, companies' boards and management.

## What we are changing

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**1.19** From 10 June 2019, we will require asset managers and asset owners to make disclosures about their engagement policies and investment strategies:

- Life insurers and asset managers must publish their engagement policy and annual information on how it has been implemented, or explain publicly why they are not doing so.
- Life insurers must disclose, on an annual basis, their arrangements with asset managers, how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities, and how these elements contribute to the medium to long term performance of their assets.
- Asset managers must provide information to asset owners, including on how their investment strategies contribute to the medium to long term performance of the assets.

**1.20** These rules are a close copy-out of relevant Directive requirements, apart from in one area. To better align with our objectives and reflect the global nature of the UK's asset management industry, we proposed that the rules should apply to investments in shares traded not only on EEA markets, the minimum requirement of SRD II, but also comparable markets outside the EEA. We are making the rules on this basis.

**1.21** We are also setting new requirements on issuers to make disclosures and establish arrangements for the approval of RPTs. In the UK, extensive RPT requirements already apply for issuers with a premium listing. These have commanded broad support in the market so we have largely retained them.

**1.22** Where SRD II permits Member States to make certain choices in implementation, we have sought to take a proportionate approach, maintaining a distinction between the protections afforded to investors under the existing premium listing rules (LRs) and the new SRD II rules.

**1.23** SRD II requirements for RPTs apply to issuers that have a registered office in an EU Member State and voting shares admitted to trading on a regulated market. Issuers that are not incorporated in a Member State (Rest of World, or 'ROW' Issuers) are outside the scope of the Directive. The listing regime generally applies requirements to any issuer in a given listing category regardless of their country of incorporation. In our proposals, we sought to ensure coherence with this longstanding principle by going further than the minimum required by the Directive. This included a proposal to extend the SRD II requirements for RPTs to ROW Issuers through our LRs.

**1.24** Reflecting feedback to CP19/7, we are modifying our final rules on RPTs. More detail is set out below, but our aim is to meet our objectives while balancing appropriately the interests of issuers and investors.

## Outcome we are seeking

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**1.25** Our new rules promote greater transparency as to how institutional investors invest the money they look after, and how they engage with the companies they invest in. This should over time encourage the emergence of a market where firms in part compete based on their effective stewardship.

**1.26** We also expect our rules to provide greater transparency and protections to investors in relation to RPTs, building on existing standards.

## Measuring success

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- 1.27** In considering the success of our new rules for asset managers and life insurers it is important to view them in the wider context of the promotion of effective stewardship.
- 1.28** There is more work to be done across the industry to identify metrics for effective stewardship to help stakeholders interpret the new disclosures. However, over time, we expect that enhanced transparency will help to encourage a market for effective stewardship. Asset owners and asset managers will be increasingly held to account for their long term investment strategies and their stewardship activities.
- 1.29** Our measures on RPTs will have been successful if we see greater transparency, and ultimately greater quality, in the controls issuing companies have around their transactions with related parties.

## Summary of feedback and our response

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- 1.30** We received 31 formal responses to our consultation, from a range of stakeholders spanning affected firms, issuers, their advisors and academics. During the consultation period, we also engaged extensively with stakeholders to understand better their views on our proposals.
- 1.31** Stakeholders generally welcomed our proposed copy-out approach to implementing relevant SRD II requirements for asset managers and life insurers, and building on our existing premium LR on RPTs. They agreed that this was a proportionate way to implement SRD II.

### Rules for asset managers and life insurers

- 1.32** Stakeholder feedback on our proposed new rules for asset managers and life insurers was generally positive. However, there was mixed feedback about our proposed approach to the geographical scope of the new rules. Some stakeholders also requested additional guidance both on the meaning of terms used in the Directive, and on the scope of the new rules.
- 1.33** On balance, we have decided to continue with the rules proposed in CP19/7. We respond to the feedback received in this PS.

### Related party transactions

- 1.34** Stakeholders generally agreed with the proposed approach to implementing the SRD II requirements for RPTs, including that we should retain our existing rules on the topic where these already apply to premium-listed issuers.
- 1.35** However, some stakeholders challenged the proposed materiality threshold for applying the new requirements. They said it was too high and would be of little value to investors. Some respondents also raised concerns about extending the new requirements to ROW Issuers. They considered these would be too burdensome to issuers and potentially cut across existing obligations in the issuers' home jurisdictions. While we had proposed that ROW Issuers already subject to a similar regime would be

exempt from the extension, those who responded on this item queried whether this would be effective in practice.

**1.36** On balance, given the general support for our proposals, we do not propose to change our broad approach to implementing the SRD II's RPT requirements. However, having considered the divergent views of respondents, we are modifying our proposals. These aim to carefully balance the interests of issuers and investors.

**1.37** So, in our final rules:

- The materiality threshold for RPTs covered by the SRD II regime will be 5% (calculated with reference to any one of the profits, assets, market capitalisation or gross capital tests), rather than 25% as originally proposed. This provides greater protection to investors from the risks of RPTs.
- While issuers will have to comply with the RPT requirements at a lower materiality threshold, we have taken steps to lower the cost of meeting these requirements. In particular, we have sought to reduce the cost to ROW Issuers in meeting these requirements, while remaining coherent with the broader LRs framework. Given there was little support for our proposal to exempt ROW Issuers that already comply with a similar overseas regime, we have modified the requirements instead of proceeding with the proposed exemption.
  - Since interaction with potentially conflicting corporate governance obligations in other jurisdictions was a concern among issuers and their advisors, we will not impose new requirements for ROW Issuers to seek board approval prior to transacting with a related party.
  - ROW Issuers will still be required to make timely disclosures of their transactions with related parties. However, these issuers will be permitted to use either the definition of 'related party' in IFRS or the definition of in the equivalent accounting standards that they use to prepare their consolidated annual financial reports.
  - These changes should reduce the risk of conflicting obligations on issuers. They should also make the costs of complying with the RPT requirements more proportionate, particularly as we are applying them to more transactions.
- Overall these changes reflect our desire to balance the concerns investors expressed during our consultation, with a proportionate burden on issuers, and particularly ROW Issuers, in complying with our new rules.

## Equality and diversity considerations

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**1.38** We have considered the equality and diversity issues that may arise from the measures in this Policy Statement.

**1.39** Overall, we do not consider that these measures materially impact any of the groups with protected characteristics under the Equality Act 2010. We of course remain open to feedback on this, as market participants begin applying the new rules in practice.



## Next steps

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**1.40** The new rules (which are set out in Appendix 1) will come into force on 10 June 2019.

**1.41** We will keep rules in this area under review, particularly in light of broader developments on sustainable finance.

### Rules for asset managers and life insurers

**1.42** This means that asset managers and life insurers will have to publish their engagement policy, or explain why they have not done so, by 10 June 2019. However, we recognise that the rules come into effect quickly after publication. So, for an initial period, a firm can comply with the relevant rule by explaining what it is doing to develop an engagement policy. This may include, for example, simply explaining that it is developing one, or considering whether or not to have one.

**1.43** Firms that are required to make annual disclosures will need to begin doing so for the first full period after the rules come into effect.

### Related party transactions

**1.44** Issuers who are within scope of the new regime for related party transactions, and ROW Issuers to whom the extension applies via the LRs, will be required to comply with the new requirements from the start of their first financial year after the new rules come into force.

## 2 Changes for asset managers and life insurers

**2.1** In this section, we summarise the feedback we received to our proposed changes for asset managers and life insurers, and set out our response.

### Our proposed approach to setting new rules for asset managers and life insurers

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**2.2** In CP19/7, we proposed a close copy-out of the Directive's requirements for asset managers and life insurers. Our proposed rules introduced requirements for:

- asset managers and certain life insurers to make disclosures relating to their shareholder engagement policies
- life insurers to:
  - a. make disclosures about their arrangements with asset managers, and
  - b. publicly disclose how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities, and how these elements of their strategy contribute to the medium to long term performance of their assets
- asset managers to make disclosures to asset owners, including on how their investment strategies contribute to the medium to long term performance of the assets of the asset owner or fund.

**2.3** Consistent with the Directive, we have avoided taking too prescriptive an approach in implementing these requirements in our rules. This will give asset owners and asset managers flexibility in how they meet the requirements, allowing them to best reflect their business models and investment strategies.

**2.4** We received several responses from asset managers. Few life insurers responded to the consultation, although we did engage with relevant trade associations during the consultation period. Stakeholders who responded, and who we have met, generally welcomed our proposed close copy-out approach.

**2.5** But some raised concerns about the geographical scope of investee companies where our proposed rules on shareholder engagement would apply. Our proposed scope extended beyond the Directive scope. Some stakeholders also sought additional guidance on certain elements of the required disclosures, and on which firms would be captured by the new rules. We discuss these issues in more detail below.

**2.6** Overall, in light of the broadly supportive response from stakeholders, we are proceeding with our proposed approach, largely copying out SRD II requirements for asset managers and life insurers.

- 2.7** We have made a small change to the Handbook requirements on life insurers to make clear that these requirements apply where the firm is investing in shares on a regulated market, both directly and through an asset manager. We believe this point was clear in the consultation paper, and the amendment reflects the wording of the Directive.

## The geographical scope of investee companies covered by our rules on shareholder engagement

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- 2.8** In CP19/7, we proposed that the rules would apply to regulated firms' engagement policies and investment strategies in relation to shareholdings in all investee companies admitted to trading on regulated markets in the EEA, or on comparable markets outside the EEA. This is a broader geographical scope than in SRD II, which focusses only on the EEA.

- 2.9** We asked:

**Q1:** *Do you agree that the territorial scope of the rules framework should extend beyond that envisaged by the Directive?*

- 2.10** Most respondents were broadly supportive of our proposed approach. Some noted the importance of promoting higher and consistent standards across countries, including in relation to consideration of ESG factors.

- 2.11** However, some respondents, particularly those representing the investment community, opposed the extension of our rules to cover holdings of shares admitted to trading on non-EEA markets. They favoured restricting the scope to holdings in shares admitted to trading on EEA regulated markets only, as in the Directive. They expressed the concern that our proposed approach could impose a disproportionate burden on UK firms compared with firms in other EEA jurisdictions.

- 2.12** Some of those opposing the extension of scope also noted that firms' shareholder engagement policies and practices often differed across markets. In some cases, they argued that effective engagement would be impossible as they often used delegated managers in other jurisdictions to manage their non-EEA investments.

- 2.13** They also noted that stewardship expectations and practices can be different in non-EEA markets and local corporate governance arrangements could be a barrier to effective engagement. In extreme cases, there could be conflicts with local requirements in these jurisdictions. One respondent argued that our rules could have the unintended consequence of discouraging investment in some non-EEA jurisdictions to avoid such conflicts.

### Our response

We have made the rules in line with the CP.

On balance, we believe there are strong arguments to proceed with our proposed approach. Consumers of UK asset management services may reasonably expect UK asset managers to consider and disclose

their approach to stewardship across all their investments in shares. As we noted in CP19/7, other parts of our rulebook do not typically differentiate between the standards expected of UK asset managers depending on which market they are investing in.

As noted, many of the responses that did not agree with our proposal to extend the geographical scope were concerned that engagement policies and practices often differed across markets.

Our proposal to extend the requirements to provide disclosure across all shares should not be read to imply an expectation that firms apply uniform practices across different jurisdictions. As we said in CP19/7, we do not expect firms to have a uniform way of engaging with investee companies in all markets.

Furthermore, the rules on firms' shareholder engagement policies apply on a comply or explain basis. Firms could explain that they have a different engagement policy for non-EEA markets in line with local standards, or that they have no engagement policy for these markets.

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## Guidance on expectations, clarification of terms and templates for disclosures

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**2.14** Consistent with our close copy-out approach to transposing the Directive, we did not propose additional Handbook guidance on the new rules. We asked some general questions about our broad approach to implementing these rules:

- Q2:** *Do you agree with our proposed amendments to the Handbook to implement the Directive requirements around engagement policies? If not, please explain what alternative approach you would like us to take.*
- Q3:** *Do you agree with our proposed approach to implementing article 3h of the Directive? If not, please explain what alternative approach you would like us to take.*
- Q4:** *Do you agree with our proposed amendments to implement the Directive requirements on asset managers reporting to asset owners? If not, please explain what alternative approach you would like us to take.*
- Q5:** *Are there any other points we should address in the Handbook in relation to SRD II, for example by adding clarificatory rules or providing further guidance?*

**2.15** Around half of those who responded to these questions requested greater clarity on our expectations on the breadth and granularity of disclosures. They asked for Handbook guidance on certain terms copied out from SRD II. These included 'significant votes', 'turnover', 'turnover costs', 'use of proxy adviser' and 'comparable market'.

- 2.16** Among the responses on this point, some asked us to specify a consistent standard format, using agreed definitions. Some asked for templates for the disclosures, which would ensure a consistent approach and make it easier to compare them. One trade association representing the investor community offered to engage with its members to develop agreed industry guidance in this area.
- 2.17** There were some specific comments about voting disclosures. One respondent expressed the strong view that voting disclosures should not be on a 'comply or explain' basis. Rather, given their importance in demonstrating to consumers and clients how shareholder rights are exercised for their benefit, they should be mandatory.
- 2.18** Others observed a partial overlap between SRD II disclosures and reporting under the FRC's Stewardship Code (both the existing Code and the proposed revised Code). Some asked for clarity on the interaction between the two.
- 2.19** Other respondents sought clarifications on specific matters, such as whether disclosures should be at the group or legal entity level. One argued that disclosures should only be required where there is a legal or contractual arrangement between the asset manager and the asset owner.
- 2.20** Another respondent argued it was important to provide enough flexibility in the rules to allow disclosures and interaction between asset managers and clients to develop and adapt over time, to reflect investor needs and overall market conditions.

### Our response

We are making the rules as we consulted on them, subject to minor technical changes that are aligned with the Directive text.

We consider it important that our rules are sufficiently flexible that firms can tailor their approach appropriately to their business models and investment strategies.

One aim of SRD II is to enable asset owners to understand the way in which their asset managers engage with the companies in which they invest. Different asset managers will choose to explain their offerings in different ways. Asset owners can then judge whether or not that offering meets their needs.

For this reason, we consider that it would be counter-productive to be too prescriptive about the form and granular content of the disclosures. To do so could unduly constrain firms in their disclosures, potentially encouraging a 'box-ticking' approach to compliance.

We are therefore not providing Handbook guidance or any templates at this time.

In making the relevant disclosures, firms may want to use or refer to information which is already provided elsewhere. For example, firms may provide information about 'turnover costs' by using information about transaction costs provided under MiFID (though, for the avoidance of doubt an alternative approach to disclosing turnover costs would also be permissible). Where information is already required under other legislation, we do not expect firms to devote significant resources to doing something different to meet the requirements of these rules,

unless they think to do so will help market participants to better understand their approach.

In response to the request for guidance on the meaning of 'insignificant votes', we noted in the CP that a recital in SRD II gives examples of potentially insignificant votes.<sup>2</sup> Firms are not required to publicly disclose how they have voted in insignificant votes.

Separately, firms are required to provide an explanation relating to the 'most significant votes'. This is a different obligation to the one referred to above, and covers a subset of their significant votes. Firms will need to decide which votes fall into this category. We do not consider that the requirement to explain the most significant votes means that firms are required to provide an explanation of all votes that they consider significant.

Regarding voting disclosures, we agree that these are important. However, to make this aspect mandatory would depart from our close copy-out approach. We also asked in the accompanying Discussion Paper on stewardship (DP19/1) whether a 'comply or explain' compliance basis was adequate, or whether certain provisions should be mandatory. We will keep this issue under review as the SRD II requirements bed in, factoring in responses to DP19/1.

In cases in which there are several entities in a group we do not see a problem with their being one engagement policy for all the firms in the group, where this is appropriate (for example where there are not material differences in the engagement approaches of the different entities).

As set out in the CP, we consider that there may be an arrangement between an asset owner and an asset manager even where the two do not have a bilateral contractual relationship.

We cannot see a reason why firms that wish to provide their SRD II disclosures in the same document as their reporting under the (revised) Stewardship Code should not be able to do so. Firms will need to consider whether the disclosures they make under the Stewardship Code are sufficient to meet their obligations under our rules.

Industry participants and other stakeholders may wish to develop additional guidance to aid interpretation and promote comparability of disclosures. As suggested in the responses, a coordinated industry approach might be particularly useful in the case of voting disclosures and we are open to working with stakeholders on this.

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## Scope of firms that will need to comply with the new rules

**2.21** Some respondents sought additional clarity on the scope of firms that will need to comply with the rules for asset managers and life insurers.

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2 Recital 18

- Respondents from private equity, investment companies, and the wealth management industry said that, in their view, either they were not covered by the proposed rules, or they considered that they were already making similar disclosures.
- One respondent asked for clarity on whether the rules would apply to small AIFMs that also undertake the MiFID investment service of portfolio management.

### Our response

The scope of the SRD II requirements follows the scope of sector-specific EU legislation such as MiFID II and AIFMD. We have already provided extensive guidance on the meaning of various relevant terms in our Perimeter Guidance manual (PERG). Firms should refer to this guidance to understand the scope of the SRD II requirements.

For example, we have provided guidance on the meaning of “collective investment undertaking” in PERG. We say in PERG 13 Q29 that closed-ended corporate schemes, such as investment trust companies, may be collective investment undertakings.

We note that the requirements only apply to a firm to the extent it is investing in shares traded on a regulated market. A private equity firm or venture capital firm investing only in unlisted shares will not generally be in scope of the Directive.

SRD II does not otherwise permit us to exempt sub-categories of in-scope firms from the Directive requirements. However, the Directive generally applies on a comply-or-explain basis. We recognise that some firms may find it more appropriate to explain why they have chosen not to comply with particular requirements.

In response to the query about application to small AIFMs, we would refer firms to PERG 13 Q43. Our view is that a small AIFM is only exempt from MiFID when acting in the capacity of an AIFM (ie when managing an AIF). We therefore generally expect small AIFMs to comply with SRD II requirements where they provide the investment service of individual portfolio management.

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## Cost benefit analysis

- 2.22** We set out a cost benefit analysis in CP19/7 which calculated the likely additional administrative costs imposed by meeting our proposed requirements.
- 2.23** A small number of respondents provided feedback on the cost benefit analysis. In general respondents were happy with the analysis presented in CP19/7.

### Our response

We retain the cost benefit analysis from the CP.

## 3 Related Party Transactions

- 3.1** In this section, we set out feedback received on our proposed rules on RPTs, and our response.
- 3.2** Our proposed implementation approach sought to deliver safeguards for investors in respect of RPTs, while imposing a proportionate burden on issuers. Overall, our approach in consulting was to implement the minimum requirements of the Directive in a way that preserved our existing RPT regime for premium listed issuers and preserved the distinction between premium and standard listing.
- 3.3** In feedback to the consultation, those representing issuers and investors held opposing views on several of our proposals. We have considered carefully this, at times contradictory, feedback, and have made some modifications to our proposed rules. In our responses and final rules, we have sought to strike a careful balance between the interests of issuers and investors.
- 3.4** Our final rules come into force on 10 June 2019, which is the deadline to implement the Directive. We received no feedback on our proposal to provide for a transitional period under which issuers within scope of the new DTRs regime, and listed companies already admitted to listing on 10 June 2019, will be required to comply with the new rules from the start of their financial year beginning on or after 10 June. We are therefore proceeding as consulted. Our new rules also state that this transitional period will end on 31 December 2020.

### SRD II and our proposals in CP 19/7

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- 3.5** SRD II requires Member States to set requirements about the disclosure and approval of transactions between issuers (who have voting shares admitted to trading on a regulated market) and their related parties (using the IFRS definition of a related party). SRD II applies to issuers incorporated in the EEA only. The Directive specifies that issuers should comply with the rules on RPTs that have been implemented in the jurisdiction in which they have their registered office.
- 3.6** In Chapter 11 of the premium LRs, we already have extensive RPT requirements for issuers with a premium listing that are generally more stringent than the minimum requirements under the Directive. These rules are well understood by the market and have commanded broad support so we proposed to keep them, making only the changes necessary to avoid conflicts with the requirements of the Directive.
- 3.7** We were also careful to ensure minimum change for premium listed issuers. Where choices were available to us under the Directive we sought to take a proportionate approach, maintaining a distinction between the protections afforded to investors under the existing LRs and the new SRD II rules.
- 3.8** We proposed to implement the minimum requirements of the Directive via the DTRs, applying these to UK incorporated issuers with voting shares admitted to a regulated market in the UK or wider EEA. This includes UK issuers with a premium or standard



listing of voting shares (the majority of which are admitted to the London Stock Exchange's Main Market) and non-listed shares admitted to regulated markets (including the London Stock Exchange's Specialist Fund Market).

- 3.9** We also proposed to introduce new continuing obligations in the LRs, extending the application of these provisions to other issuers, including ROW Issuers with either standard or premium listed equity shares, and issuers with premium listed Global Depositary Receipts (GDRs). The aim was to maintain the principle underpinning the listing regime that all issuers in a listing category must meet the same requirements. These requirements are generally determined by the listing category that the issuer chooses rather than where it is incorporated.
- 3.10** We received eight formal responses on our RPT proposals. We also engaged with other stakeholders and advisors who offered valuable feedback. Key areas of feedback and our responses are set out below.

## Overall approach to implementing SRD II provisions on RPTs including the materiality threshold for the new requirements

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- 3.11** We consulted on maintaining two distinct related party regimes. We proposed to retain the existing rules on RPTs in the LRs for issuers with a premium listing. A new regime would then be established in the DTRs to implement the Directive, calibrated along similar lines to the provisions in the LRs (where permitted under the Directive) but imposing less stringent obligations on issuers.
- 3.12** The Directive imposes both disclosure and governance requirements for RPTs. We proposed that the new SRD II rules would entail disclosure and board approval obligations, without the need for shareholder approval or a third-party report. This would distinguish the new DTRs from what is currently required in the premium LRs.
- 3.13** The new SRD II requirements apply only in respect of transactions that are deemed to be material relative to the size of the issuer (in respect of any one of the profits, assets, market capitalisation or gross capital tests). This is the same approach used for RPTs in premium listing.
- 3.14** We proposed a threshold for materiality of 25% in the new DTRs. This compares with a threshold of 5% in the existing (retained) rules for RPTs for premium listed issuers.
- 3.15** We also proposed that certain transaction types would be exempt from the new rules on RPTs, as permitted by the Directive, including directors' remuneration where this complies with the UK Companies Act. In the UK, company law sets requirements in relation to quoted companies for how directors' remuneration is approved and disclosed to shareholders; these requirements have been updated by BEIS to reflect other parts of SRD II.
- 3.16** We asked:

**Q6:** *Do you agree with how we are proposing to implement SRD II requirements on related party transactions in the DTRs (including our proposal to replicate existing LR provisions so far as possible and choosing a threshold of 25%)? If not, please explain what alternative approach you would like us to take.*

- 3.17** There were eight formal responses to this question. Respondents generally supported our approach to implementing the SRD II requirements for RPTs via a separate regime in the DTRs.
- 3.18** All of the formal responses and the majority of our additional stakeholder feedback agreed that we should retain our existing rules on RPTs where these already apply to premium listed issuers. The dissenting view was from an advisor who suggested we align our premium LRs on RPTs with the Directive minimum requirements, which are in general less stringent than the premium LRs.
- 3.19** Seven of the formal responses, including from the issuer and investor communities, agreed that we should implement the Directive-minimum obligations via the DTRs. However, a trade association told us that its members would have preferred the opportunity to vote on RPTs. This respondent also noted that some of its members would have supported having an independent third-party report on these transactions, even for issuers without a premium listing.
- 3.20** Where the Directive offers us discretion on how to implement the minimum requirements, respondents supported our decision to copy across provisions and concepts from the LRs that were already well established and understood by the market. We received limited feedback on our proposals to exempt certain transaction types from the new RPT requirements.
- 3.21** However, we received substantive disagreement from the investor community around the proposed 'materiality' threshold. Of the eight formal responses on this issue, four from the investor community (including a trade association) considered the 25% threshold to be too high. Some expressed the view that a 25% materiality threshold would be triggered so rarely as to offer little or no value to investors. Respondents representing the issuer community, however, agreed with the 25% threshold.
- 3.22** Some respondents from the investor community also argued that a judgement on materiality should not differ by an issuer's listing category: any materiality threshold should be the same for all issuers. They proposed that materiality should be substantially lower, suggesting 5% for all RPTs. This is the current threshold for shareholder approval of a RPT under our premium listing regime. Some acknowledged, however, that the approval and other requirements that apply in the event a RPT is deemed material could be different.

### Our response

Given the general support, we do not propose to change our broad approach to implementing the SRD II requirements for RPTs. We will implement the minimum standards from the Directive through the DTRs and retain the more stringent existing requirements for premium listing in the LRs. We are proceeding with our proposals to exempt certain transaction types, including UK Companies Act-compliant transactions for directors' remuneration.

We agree with the feedback that materiality should not depend on the issuer's listing category and that a better approach would be to apply the same materiality threshold for all RPTs.

We are therefore reducing the materiality threshold to 5% in our final SRD II rules for all RPTs. This aligns the threshold with the retained premium listing requirements.

However, as originally proposed, we are maintaining a distinction between premium listing and the DTRs rules in what is required of issuers in terms of approvals and associated shareholder rights. Under our rules on RPTs, only the existing premium LRs will require shareholder approval and a third-party report. Under the revised DTRs, only board approval will be required in addition to the disclosure requirements.

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## Extending the SRD II requirements to ROW Issuers and premium listed GDRs

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- 3.23** We proposed that the SRD II requirements should also apply to ROW Issuers with a premium or standard listing of equity shares, or a premium listing of GDRs. This was intended to reconcile the Directive scope with the existing principle underpinning the LRs that all issuers in a given listing category should be subject to the same requirements.
- 3.24** We recognised that ROW Issuers may already be subject to regulatory requirements on RPTs in their home jurisdiction. To reduce duplication of requirements and a burden on issuers that would have no benefit to investors, we proposed that ROW Issuers already subject to a broadly similar regime would be exempt from the new requirements.
- 3.25** We asked:
- Q7:** *Do you agree with our proposed amendment to the LRs – in particular, that we should extend our rules for related party transactions to all issuers with a premium listing (except those subject to LR 16) or with a standard listing of shares that have their registered office outside of the UK or other EU Member State? Further do you agree that we should give recognition to compliance with equivalent standards in non-EU jurisdictions and, if so, what are your views on how this could best be achieved?*
- 3.26** We received 6 formal responses on this question and additional feedback from our wider stakeholder engagement. 5 formal responses from the investor community supported our approach that all issuers in a given listing category should have to meet the same requirements. This view was shared by an advisory firm that also provided feedback.
- 3.27** One formal response which considered the question from the perspective of issuers and took into account the views of different listing venues did not agree with extending the SRD II requirements to ROW Issuers. This respondent told us that the market could rely on market pricing to adequately reflect differences in corporate governance standards internationally. They also considered that it could reduce London's attractiveness to such issuers for the standard listing segment.

- 3.28** To support the view that the rules should not be extended to ROW Issuers their formal response explained their concerns regarding both the approval and disclosure requirements for RPTs.
- 3.29** We understand that issuers' (and their advisors') main concerns related to imposing the board approval requirements on ROW Issuers. They considered that these could be disproportionate and potentially in conflict with standards in an issuer's home jurisdiction.
- 3.30** However, they also opposed introducing additional transparency requirements. In particular, they queried whether the new rules would achieve meaningful new disclosure since relevant transactions might be disclosable anyway under the Market Abuse Regulation (MAR). Respondents also noted that those issuers who prepared their accounts in accordance with non-IFRS standards would be impacted disproportionately if they had to change their systems to identify relevant transactions using the IFRS definition of a related party.
- 3.31** There was little support for our exemption proposal for ROW Issuers. Some respondents thought it would be unworkable for the FCA to operate such an exemption. Respondents representing the issuer community noted, in particular, that it might be difficult for the FCA to determine whether a non-EEA regime provided similar protections in respect of RPTs. Moreover, if the issuer was subject to a different domestic regime as well, it might suffer from having to comply with two separate regimes. Thus, the default position would be for ROW Issuers to follow the new SRD II provisions, with attendant costs and potentially adverse consequences for the standard listed market. It was suggested that we drop the extension to ROW Issuers in its entirety, taking the view that the market already understands that such standards differ internationally and reflects this in share prices.
- 3.32** The investor community offered different reasons for their reservations about such an exemption. One respondent considered that there could be insufficient legal clarity on the definitive use of the equivalence mechanism, and stating that . Others told us they remained to be convinced that the exemption would not lead to lower standards.

### Our response

We have considered this feedback and have modified our proposals for the continuing obligations in the LRs which extend the new related party regime to ROW Issuers.

Acknowledging the difficulties in operating an exemption regime, we will not proceed with offering an exemption for compliance with 'equivalent' overseas RPT regimes.

However, we are making other changes that should reduce the compliance burden and associated costs for ROW Issuers, while ensuring that investors benefit from greater and more timely transparency on RPTs in relation to all standard listed issuers regardless of their country of incorporation. In doing so, we are seeking to balance the interests of issuers and investors. In our final rules:

- ROW Issuers will not be subject to specific board approval rules but will still be required to announce their material RPTs no later than when the terms of the transaction are agreed; and
- ROW Issuers will be able to use a definition of a related party from 'equivalent' non-IFRS accounting standards, where these are already used, which should

make it easier and less costly for them to adapt their internal processes to meet the new disclosure requirements.

These issues are covered in more detail below. We have also clarified in our final rules that where the new continuing obligations in the LRs refer to equity shares this excludes open-ended investment companies.

### **Board approval requirements**

We accept the importance of differentiating between the new board approval requirements for RPTs and the new public disclosure requirements.

For the purposes of extending our new requirements, we accept that ROW Issuers may already have different corporate governance arrangements, which may be in line with their national requirements. We also agree that, where there is sufficient disclosure, the market can take any remaining governance risks into account in its valuation of securities.

With this in mind, we have modified our original proposals. We will require ROW Issuers with a standard or premium listing of equity shares to comply with our new transparency obligations that implement SRD II requirements, but not our new board approval requirements.

Premium listed ROW Issuers must continue to meet their premium listing obligations in full for RPTs. This also includes a shareholder vote and a sponsor opinion for material RPTs.

### **Making disclosures easier and less costly for ROW issuers where appropriate**

We acknowledge that a proportion of ROW Issuers will be disproportionately impacted by the disclosure requirements that require them to identify related parties using the IFRS definition where they prepare their annual financial reports to other accounting standards. These issuers would need to adapt their internal reporting systems to enable them to identify related parties using the definitions in both standards.

We therefore considered how to reduce the additional disclosure burden and associated costs on these issuers, while still ensuring a good level of transparency on RPTs for investors. Our final rules permit ROW Issuers to apply the definition of a 'related party' from IFRS or from the alternative accounting standards that they use to prepare their consolidated annual financial statements, where these accounting standards are deemed 'equivalent' for the purposes of the Transparency Directive (TD).

This allows, for example, US issuers with a standard listing of shares to use an alternative definition of a related party in US Generally Accepted Accounting Principles (GAAP) – resulting in broadly similar disclosures being made than if they had applied the definition in IFRS.

We consider these changes to be a proportionate response that addresses issuers' concerns. Our modified requirements continue to ensure real-time transparency by all issuers within the same listing

categories and recognise that issuers might already apply a different definition of a 'related party' under equivalent accounting standards. The market will appraise and price remaining corporate governance risk as it currently does, including around how disclosed RPTs are approved by the issuer before they are concluded.

### **Directors' remuneration paid by ROW Issuers**

Respondents and stakeholders did not provide specific feedback on how the extended requirements should apply to remuneration paid to directors by ROW Issuers. Issuers may not have focussed their responses on this specific transaction type because they were against extending the rules to all transactions with related parties.

However, ROW Issuers with a standard or premium listing of equity shares will need to consider whether they are required to disclose directors' remuneration in the context of our modified proposals for disclosing transactions with related parties. As set out above, the new board approval requirements will not apply for ROW Issuers.

For our new rules that implement the Directive, we consulted on exempting certain transaction types, including directors' remuneration, from the new RPT requirements.

In the UK, company law sets requirements in relation to quoted companies for how directors' remuneration is approved and disclosed to shareholders. These requirements have been updated by BEIS to take account of other parts of SRD II. Therefore, we are exempting Companies Act compliant transactions for directors' remuneration from our new DTR rules as permitted by SRD II.

This exemption cannot be extended to ROW Issuers as they are incorporated outside of the UK and so are not subject to UK domestic company law requirements.

For ROW Issuers, we proposed a wider exemption to apply more generally where issuers already comply with an equivalent (or broadly similar) overseas regime for RPTs. We are not proceeding with this, given the concerns that were raised about a broader equivalence exemption.

In practice, remuneration paid to directors may be disclosable by ROW Issuers under the extension of our requirements via the new LRs if the director is a related party (under the IFRS definition of a related party or the definition in the alternative 'equivalent' accounting standard) and the transaction is not in the ordinary course of business and concluded on normal market terms. In this case, the ROW Issuer will be required to assess the materiality of the transaction and disclose it where the 5% threshold is met.

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## **Other feedback**

### **3.33** We asked:

**Q8:** **Are there any other points we should address in our rules for related party transactions in relation to SRD II?**

### **Aggregation rules**

- 3.34** Under SRD II, issuers are required to aggregate transactions with the same related party over the previous 12 months. Where the aggregated transactions meet the materiality threshold, the board approval and disclosure requirements will apply to all of the transactions included in the aggregation, and not just the one that results in the materiality threshold being reached.
- 3.35** One respondent questioned how issuers could announce the earlier transaction(s) 'no later than the time when its terms are agreed' and to obtain board approval for it 'before entering into it'
- 3.36** It was suggested that we align the DTRs with the aggregation rules in premium listing. These provide for the approval and disclosure of the transaction that triggers the materiality threshold and disclosure of the earlier aggregated transaction(s).

#### **Our response**

SRD II provides that the approval and disclosure obligations will apply to all aggregated transactions with the same related party once the materiality threshold is reached. The Directive does not provide for alternative options on this matter.

We recognise the challenge for issuers in complying with these provisions for completed transactions included in the aggregation. However, issuers that are proposing to enter into a sequence of smaller transactions with the same related party, will need to take into account and plan for how they will be able to meet their future obligations for those individual transactions under the aggregation rules.

#### **Subsidiary exemption**

It was also pointed out that class testing joint venture arrangements under the premium listing requirements for RPTs can be complex for issuers in the extractive industries that are required to have local partners. These respondents noted that further clarity may be sought on how the subsidiary exemption under the new rules would work in practice.

We recognise these issue, and encourage issuers to engage with us on them, seeking individual guidance from the FCA, where appropriate.

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## **Cost benefit analysis (CBA)**

- 3.37** We asked:

**Q9:** *Do you agree with the conclusion and analysis set out in our cost benefit analysis?*

- 3.38** In our original CBA, we set out the costs imposed for familiarisation and gap analysis and the ongoing implementation costs. Only one of the 8 formal responses

commented on our cost benefit analysis. They told us that the costs of these proposals were likely to be higher and outweigh the benefits.

- 3.39** Another stakeholder from the advisory community made a general comment emphasising the increase in regulatory burden and its impact on changing systems and controls to meet the new requirements.

### Our response

We have considered the feedback regarding regulatory burden. We have also considered the implications for costs and benefits of the changes that we are making to the final regime.

#### Costs

While we are making changes to our proposal on RPTs, these should not lead to changes to the CBA.

For SRD II implementation, lowering the materiality threshold should not require changes to the CBA because costs were originally calculated using the premium listing regime as a proxy (which already uses the 5% threshold).

Our proposed modifications in respect of the extension of the regime to ROW Issuers will reduce the regulatory burden on these issuers. ROW Issuers will not be subject to the new board approval requirements. Also, ROW Issuers that prepare their annual financial reports using 'equivalent' accounting standards for TD purposes will be permitted to use a definition of related party from those standards. This should reduce the number of issuers that need to change their processes to enable them to identify related parties using the IFRS definition of such.

#### Benefits

Under our modified proposals investors should still benefit from timely and detailed notifications of transactions which may be relevant to their investment decisions. The reduction in the materiality threshold from 25% to 5% will improve that transparency. This benefit applies to our implementation of SRD II and the extension to ROW Issuers.

As we are not setting new board approval requirements for ROW Issuers, there are likely to be differences in the governance arrangements for issuers with a standard listing, and potentially for issuers with a premium listing where the transaction falls within the new LRs but outside the premium listing requirements in LR11. We do not consider that this will have a significant impact on overall benefits, as long as we retain high standards for transparency.

Our view remains therefore that the benefits of our modified proposals outweigh the costs.



# Annex 1

## List of non-confidential respondents

Aberdeen Standard Investments

Optima Partners

Anna Tilba, Associate Professor Durham University Business School

Securities Industry and Financial Markets Association (SIFMA)

Ruffer LLP

Investment Association

British Private Equity and Venture Capital Association (BVCA)

Association of Pension Lawyers

Allianz Global Investing

City of London Law Society and the Law Society

Charles Stanley

Association of Investment Companies

Schroders

Professor Chiu and Dionysia Katelouzou Kings College London

Lane Clark and Peacock

Fusion Wealth

Hermes

Principle of Responsible Investment

Alex Edmans Professor of Finance London Business School

Institute of Chartered Secretaries and Administrators

CFA

National Employment Savings Trust

Share Action

Brewin Dolphin

Share Society

UK Shareholders' Association

B&CE Holding

Association of Financial Mutuals

## Annex 2

### Abbreviations used in this paper

<b>AIFM</b>	Alternative investment fund manager
<b>BEIS</b>	Department of Business, Energy and Industrial Strategy
<b>COBS</b>	Conduct of Business sourcebook.
<b>CP</b>	Consultation Paper
<b>DTRs</b>	Disclosure Guidance and Transparency Rules
<b>DP</b>	Discussion Paper
<b>DWP</b>	Department of Work and Pensions
<b>EU</b>	European Union
<b>EEA</b>	European Economic Area
<b>ESG</b>	Environmental, Social and Governance
<b>FCA</b>	Financial Conduct Authority
<b>FRC</b>	Financial Reporting Council
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GDR</b>	Global Depository Receipt
<b>IAS</b>	International Accounting Standards
<b>IFRS</b>	International Financial Reporting Standards <sup>3</sup>
<b>IGC</b>	Independent Governance Committee
<b>LRs</b>	Listing Rules
<b>MAR</b>	Market Abuse Regulation
<b>MiFID</b>	Markets in Financial Instruments Directive
<b>PERG</b>	Perimeter Guidance manual
<b>PS</b>	Policy Statement

<sup>3</sup> As adopted pursuant to Regulation (EC) No 1606/2002.

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<b>RPTs</b>	Related Party Transactions
<b>SRD II</b>	Revised Shareholder Rights Directive
<b>TD</b>	Transparency Directive
<b>UCITS</b>	Undertakings for Collective Investment in Transferable Securities.

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We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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# Appendix 1

## Made rules (legal instrument)

**SHAREHOLDER RIGHTS DIRECTIVE (ASSET MANAGERS AND INSURERS)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 137A (The FCA’s general rules);
    - (b) section 137T (General supplementary powers);
    - (c) section 139A (Power of the FCA to give guidance);
    - (d) section 247 (Trust scheme rules);
    - (e) section 248 (Scheme particulars rules);
    - (f) section 261I (Contractual scheme rules);
    - (g) section 261J (Contractual scheme particulars rules); and
  - (2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 10 June 2019.

**Amendments to the Handbook**

- D. The modules of the FCA Handbook listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Conduct of Business sourcebook (COBS)	Annex C

**Notes**

- E. In this instrument, the “notes” (indicated by “Note:”, “*Editor’s note*” or “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

- F. This instrument may be cited as the Shareholder Rights Directive (Asset Managers and Insurers) Instrument 2019.

By order of the Board  
30 May 2019

[*Editor's note*: the text in this draft instrument takes no account of the amendments proposed in PS19/5 'Brexit Policy Statement: Feedback on CP18/28, CP18/29, CP18/34, CP18/36 and CP19/2' (February 2019).]

## Annex A

### Amendments to the Glossary of definitions

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

- |                                   |  |
|-----------------------------------|--|
| <i>engagement policy</i>          | (1) (in <i>SYSC</i> 3.4) as defined in <i>SYSC</i> 3.4.4R(1)(a).   |
|                                   | (2) (in <i>COBS</i> 2.2B) as defined in <i>COBS</i> 2.2B.5R(1)(a).   |
| <i>proxy advisor</i>              | a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies, with a view to informing investors' voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights.  |
| <i>SRD</i>                        | the <i>Shareholder Rights Directive</i> .  |
| <i>SRD asset manager</i>          | (1) an <i>investment firm</i> that provides <i>portfolio management</i> services to investors;   |
|                                   | (2) an <i>AIFM</i> that is not a <i>small AIFM</i> ; or  |
|                                   | (3) the <i>operator</i> of a <i>UCITS</i> .  |
|                                   | [Note: article 1(2)(f) of <i>SRD</i> ]   |
| <i>SRD institutional investor</i> | (1) an undertaking carrying out activities of life assurance within the meaning of points (a), (b) and (c) of article 2(3) of Directive 2009/138/EC of the European Parliament and of the Council, and of reinsurance as defined in point (7) of article 13 of that Directive, provided that those activities cover life-insurance obligations, and which is not excluded pursuant to that Directive; or |
|                                   | (2) an institution for occupational retirement provision falling within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council, in accordance with article 2 thereof, unless a Member State has chosen not to apply that Directive in whole or in parts to that institution in accordance with article 5 of that Directive.   |



Amend the following definition as shown. Underlining indicates new text and striking through indicates deleted text.

*regulated market*

- (1) a multilateral system operated and/or managed by a *market operator*, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in *financial instruments* - in the system and in accordance with its non-discretionary rules - in a way that results in a contract, in respect of the *financial instruments* admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of *MiFID*.

[Note: article 4(1)(21) *MiFID*]

- (2) (in addition, in ~~*INSPRU* and *IPRU(INS)*~~ *INSPRU*, *IPRU(INS)*, *SYSC 3.4* and *COBS 2.2B* only) a market situated outside the *EEA States* which is characterised by the fact that:
- (a) it meets comparable requirements to those set out in (1); and
  - (b) the *financial instruments* dealt in are of a quality comparable to those in a regulated market in the United Kingdom.

## Annex B

### Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

Insert the following new section after SYSC 3.3 (Additional requirements for insurance distribution). The text is not underlined.

#### 3.4 SRD requirements

##### Application

- 3.4.1 R This section applies to:
- (a) a *UK insurer*; and
  - (b) a *UK pure reinsurer*,  
doing *long-term insurance business*.
- 3.4.2 R The *rules* in this section apply to the extent that a *firm* is investing (or has invested), directly or through an *SRD asset manager*, in *shares* traded on a *regulated market*.
- 3.4.3 G The defined term *regulated market* has an extended meaning for the purposes of this section. The definition includes certain markets situated outside the *EEA*.

##### Engagement policy and disclosure of information

- 3.4.4 R A *firm* must either:
- (1) (a) develop and publicly disclose an *engagement policy* that meets the requirements of *SYSC 3.4.5R* (an “engagement policy”); and
  - (b) publicly disclose on an annual basis how its *engagement policy* has been implemented, in a way that meets the requirements of *SYSC 3.4.6R*; or
  - (2) publicly disclose a clear and reasoned explanation of why it has chosen not to comply with any of the requirements imposed by (1).

[**Note:** article 3g(1) and (1)(a) of *SRD*]

- 3.4.5 R The *engagement policy* must describe how the *firm*:
- (1) integrates shareholder engagement in its investment strategy;
  - (2) monitors investee companies on relevant matters, including:

- (a) strategy;
  - (b) financial and non-financial performance and risk;
  - (c) capital structure; and
  - (d) social and environmental impact and corporate governance;
- (3) conducts dialogues with investee companies;
  - (4) exercises voting rights and other rights attached to *shares*;
  - (5) cooperates with other shareholders;
  - (6) communicates with relevant stakeholders of the investee companies; and
  - (7) manages actual and potential conflicts of interests in relation to the *firm's* engagement.

[**Note:** article 3g(1)(a) of *SRD*]

- 3.4.6 R (1) The annual disclosure must include a general description of voting behaviour, an explanation of the most significant votes and the use of the services of *proxy advisors*.
- (2) (a) Subject to (b), a *firm* must publicly disclose how it has cast votes in the general meetings of companies in which it holds *shares*.
- (b) A *firm* is not required to disclose votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.

[**Note:** article 3g(1)(b) of *SRD*]

- 3.4.7 R (1) The applicable disclosures or information referred to in *SYSC* 3.4.4R to *SYSC* 3.4.6R must be made available free of charge on the *firm's* website.
- (2) Where an *SRD asset manager* implements the engagement policy, including voting, on behalf of a *firm*, the *firm* must make a reference as to where such voting information has been published by the *SRD asset manager*.

[**Note:** article 3g(2) of *SRD*]

#### Investment strategy and arrangements with SRD asset managers

- 3.4.8 R A *firm* must disclose publicly how the main elements of its equity investment strategy are consistent with the profile and duration of its

liabilities, in particular long-term liabilities, and how they contribute to the medium- to long-term performance of its assets.

[**Note:** article 3h(1) of *SRD*]

- 3.4.9 R (1) Where an *SRD asset manager* invests on behalf of a *firm*, whether on a discretionary client-by-client basis or through a collective investment undertaking, the *firm* must publicly disclose the following information regarding its arrangement with the *SRD asset manager*:
- (a) how the arrangement with the *SRD asset manager* incentivises the *SRD asset manager* to align its investment strategy and decisions with the profile and duration of the liabilities of the *firm*, in particular long-term liabilities;
  - (b) how that arrangement incentivises the *SRD asset manager* to make investment decisions based on assessments of medium- to long-term financial and non-financial performance of the investee company, and to engage with investee companies in order to improve their performance in the medium- to long-term;
  - (c) how the method and time horizon of the evaluation of the *SRD asset manager's* performance and the remuneration for asset management services are in line with the profile and duration of the liabilities of the *firm*, in particular its long-term liabilities, taking into account its absolute long-term performance;
  - (d) how the *firm* monitors portfolio turnover costs incurred by the *SRD asset manager* and how it defines and monitors a targeted portfolio turnover or turnover range; and
  - (e) the duration of the arrangement with the *SRD asset manager*.
- (2) Where the arrangement with the *SRD asset manager* does not contain one or more such elements, the *firm* must give a clear and reasoned explanation why this is the case.

[**Note:** article 3h(2) of *SRD*]

- 3.4.10 R The information referred to in *SYSC 3.4.8R* and *SYSC 3.4.9R* must:
- (1) be made available, free of charge, on the *firm's* website; and
  - (2) be updated annually, unless there is no material change.

[**Note:** article 3h(3), first paragraph of *SRD*]

Amend the following as shown. Underlining indicates new text.

...

## **10 Conflicts of interest**

...

### **10.1 Application**

...

Requirements only apply if a service is provided

10.1.2 ...

SRD requirements

10.1.2A R The requirements in this section apply to an *SRD asset manager* with regard to its engagement activities covered by the *SRD*.

[Note: article 3g(3) of *SRD*]

...

## Annex C

## Amendments to the Conduct of Business sourcebook (COBS)

Amend the following as shown. Underlining indicates new text.

**1 Application and purpose**

...

**1 Application (see COBS 1.1.2R)**

**Annex  
1**

...

Part 3: Guidance

...		
<b>10.</b>	<b>AIFMD: effect on territorial scope</b>	
...		
<b><u>11.</u></b>	<b><u>SRD: effect on territorial scope</u></b>	
<u>11.</u> <u>1</u>	<u>G</u>	<u>SRD includes a number of requirements on SRD asset managers. These requirements are implemented in COBS 2.2B.</u>
<u>11.</u> <u>2</u>	<u>G</u>	<u>SRD provides that the EEA State competent to regulate these requirements is the Home State as defined in the applicable sector-specific legislation. COBS 2.2B therefore applies where a UK firm carries on activities from an establishment in the United Kingdom or another EEA State, as set out in COBS 2.2B.4R.</u>
		<b>[Note: article 1(2)(a) of SRD]</b>

Insert the following new section after COBS 2.2A (Information disclosure before providing services (MiFID and insurance distribution provisions)). The text is not underlined.

**2.2B SRD requirements**

Application: Who?

2.2B.1 R This section applies to:

- (1) a *UK MiFID investment firm* that provides *portfolio management* services to investors;
- (2) a *third country investment firm* that provides *portfolio management* services to investors;
- (3) a *UK UCITS management company*;
- (4) an *ICVC* that is a *UCITS scheme* without a separate *management company*; and
- (5) a *full-scope UK AIFM*.

[**Note:** article 2(f) of *SRD*]

Application: What?

- 2.2B.2 R This section applies to the extent that the *firm* is investing (or has invested) on behalf of investors in *shares* traded on a *regulated market*.
- 2.2B.3 G The defined term *regulated market* has an extended meaning for the purposes of this section. The definition includes certain markets situated outside the *EEA*.

Application: Where?

- 2.2B.4 R (1) This section applies in relation to activities carried on by a *firm* from an establishment in the *United Kingdom*.
- (2) This section also applies in relation to activities carried on by a *UK firm* from an establishment in another *EEA State*.

Engagement policy and disclosure of information

- 2.2B.5 R A *firm* must either:
- (1) (a) develop and publicly disclose an *engagement policy* that meets the requirements of *COBS 2.2B.6R* (an “engagement policy”); and
    - (b) publicly disclose on an annual basis how its *engagement policy* has been implemented in a way that meets the requirements of *COBS 2.2B.7R*; or
  - (2) publicly disclose a clear and reasoned explanation of why it has chosen not to comply with any of the requirements imposed by (1).

[**Note:** article 3g(1) and (1)(a) of *SRD*]

- 2.2B.6 R The *engagement policy* must describe how the *firm*:
- (1) integrates shareholder engagement in its investment strategy:

- (2) monitors investee companies on relevant matters, including:
  - (a) strategy;
  - (b) financial and non-financial performance and risk;
  - (c) capital structure; and
  - (d) social and environmental impact and corporate governance;
- (3) conducts dialogues with investee companies;
- (4) exercises voting rights and other rights attached to *shares*;
- (5) cooperates with other shareholders;
- (6) communicates with relevant stakeholders of the investee companies; and
- (7) manages actual and potential conflicts of interests in relation to the *firm's* engagement.

[**Note:** article 3g(1)(a) of *SRD*]

- 2.2B.7 R (1) The annual disclosure must include a general description of voting behaviour, an explanation of the most significant votes and reporting on the use of the services of *proxy advisors*.
- (2) (a) Subject to (b), a *firm* must publicly disclose how it has cast votes in the general meetings of companies in which it holds *shares*.
- (b) A *firm* is not required to disclose votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.

[**Note:** article 3g(1)(b) of *SRD*]

- 2.2B.8 R The applicable disclosures or information referred to in *COBS 2.2B.5R* to *COBS 2.2B.7R* must be made available free of charge on the *firm's* website.

[**Note:** article 3g(2) of *SRD*]

#### Transparency of asset managers

- 2.2B.9 R (1) This *rule* applies where a *firm* invests on behalf of an *SRD institutional investor*, whether on a discretionary client-by-client basis or through a collective investment undertaking.



- (2) The *firm* must disclose to the relevant *SRD institutional investor*, on an annual basis, how its investment strategy and the implementation of it:
- (a) complies with the arrangement referred to in (1); and
  - (b) contributes to the medium- to long-term performance of the assets of the *SRD institutional investor* or of the *fund*.
- (3) The disclosure must include reporting on:
- (a) the key material medium- to long-term risks associated with the investments;
  - (b) portfolio composition;
  - (c) turnover and turnover costs;
  - (d) the use of *proxy advisors* for the purpose of engagement activities;
  - (e) the *firm's* policy on securities lending and how that policy is applied to supports the *firm's* engagement activities if applicable, particularly at the time of the general meeting of the investee companies;
  - (f) whether and, if so, how, the *firm* makes investment decisions based on evaluation of medium- to long-term performance of an investee company, including non-financial performance; and
  - (g) whether and, if so, which conflicts of interests have arisen in connection with engagement activities and how the *firm* has dealt with these conflicts.

[Note: article 3i(1) of *SRD*]

2.2B.10 G A *firm* may provide the disclosure in *COBS 2.2B.9R* by making the relevant information publicly available.

Amend the following as shown. Underlining indicates new text.

**18 Specialist regimes**

...

**18.5A Full-scope UK AIFMs and incoming EEA AIFM branches**

...

## Application or modification of general COBS rules

18.5A.3 R A firm when it is carrying on *AIFM investment management functions*:

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	Full-scope UK AIFM	Incoming EEA AIFM branch
...		
2.1.4R (AIFMs best interest rule)	...	...
<u>2.2B (SRD requirements)</u>	<u>Applies</u>	<u>Does not apply</u>
...		

...

## 18.5B UCITS management companies

...

## Application or modification of general COBS rules

18.5B.2 R A firm when it is carrying on *scheme management activity*:

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	UCITS management company
...	
2.1.1 (The client's best interests rule)	Applies
<u>2.2B (SRD requirements)</u>	<u>Applies</u>
...	

...

**18.9 ICVCs**

18.9.1 R ...

(3) COBS 2.2B (SRD requirements) applies to an ICVC that is a UCITS scheme without a separate management company.

...

**LISTING AND DISCLOSURE SOURCEBOOKS (SHAREHOLDER RIGHTS  
DIRECTIVE) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 73A (Part 6 Rules);
  - (2) section 89O (Corporate governance rules);
  - (3) section 96 (Obligations of issuers of listed securities);
  - (4) section 137A (The FCA’s general rules);
  - (5) section 137T (General supplementary powers); and
  - (6) section 139A (Power of the FCA to give guidance).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 10 June 2019.

**Amendments to the Handbook**

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex A
Listing Rules sourcebook (LR)	Annex B
Disclosure Guidance and Transparency Rules sourcebook (DTR)	Annex C

**Notes**

- E. In Annex C to this instrument, the notes (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

- F. This instrument may be cited as the Listing and Disclosure Sourcebooks (Shareholder Rights Directive) Instrument 2019.

By order of the Board  
30 May 2019

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

*material related party transaction* (in *DTR*) a *related party transaction* where any *percentage ratio* is 5% or more.

*related party tests* (in *DTR*) the tests set out in *DTR 7 Annex 1*, which are used to determine whether a transaction or arrangement is a *material related party transaction*.

*Shareholder Rights Directive* Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies.

Amend the following definitions as shown.

*associate* (1) (in *LR*~~<sub>2</sub>~~) ~~(in relation to a *director, substantial shareholder, or person exercising significant influence*, who is an individual) and~~ (in *DTR*, in relation to a *related party* who is an individual):

...

(2) (in *LR*~~<sub>2</sub>~~) ~~(in relation to a *substantial shareholder, or person exercising significant influence which is a company*) and~~ (in *DTR*, in relation to a *related party* which is a *company*):

...

...

*debt security* (1) (in *LR* and *DTR 7*) *debentures, alternative debentures, debenture stock, loan stock, bonds, certificates of deposit or any other instrument creating or acknowledging indebtedness.*

...

- percentage ratio* (1) (in *LR*) (in relation to a transaction) the figure, expressed as a percentage, that results from applying a calculation under a *class test* to the transaction-;
- (2) (in *DTR*) (in relation to a transaction or arrangement) the figure, expressed as a percentage, that results from applying a calculation under a *related party test* to the transaction or arrangement.
- related party* ...
- (2) ...
- (c) that *person's* parent, brother, sister, child, grandparent or grandchild-;
- (3) (in *DTR*) as defined in *DTR 7.3.2R*.
- related party transaction* (1) (in *LR*) as defined in *LR 11.1.5R*-;
- (2) (in *DTR*) as defined in *DTR 7.3.3R*.

## Annex B

### Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise indicated.

#### 9 Continuing obligations

...

#### 9.2 Requirements with continuing application

...

Compliance with the disclosure requirements, ~~and~~ transparency rules and corporate governance rules

...

9.2.6C R A listed company that is not already required to comply with:

- (1) DTR 7.3 (Related party transactions); or
- (2) requirements imposed by another EEA State that correspond to DTR 7.3;

must comply with DTR 7.3 as if it were an issuer to which DTR 7.3 applies, subject to the modifications set out in LR 9.2.6DR.

9.2.6D R For the purposes of LR 9.2.6CR, DTR 7.3 is modified as follows:

- (1) DTR 7.3.2R must be read as if the words “has the meaning in IFRS” are replaced by:
  - “has the meaning:
    - (a) in IFRS; or
    - (b) where the listed company prepares annual consolidated financial statements in accordance with accounting standards which have been determined to be equivalent to IFRS by the European Commission in accordance with Commission Regulation (EC) No. 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council,



- (i) in IFRS, or
- (ii) in the equivalent accounting standards in accordance with which its annual consolidated financial statements are prepared;

at the choice of the listed company.”

(2) DTR 7.3.8R(2) and (3) do not apply;

(3) DTR 7.3.9R must be read as follows:

(a) as if the words “after obtaining board approval” are replaced by “after publishing an announcement in accordance with DTR 7.3.8R(1)”; and

(b) the reference to DTR 7.3.8R must be read as a reference to DTR 7.3.8R as modified by LR 9.2.6DR(2); and

(4) in DTR 7.3.13R the references to DTR 7.3.8R must be read as references to DTR 7.3.8R as modified by LR 9.2.6DR(2).

...

## 14 Standard listing (shares)

...

### 14.3 Continuing obligations

...

Compliance with the transparency rules and corporate governance rules

...

14.3.25 R A company with a standard listing of equity shares (other than an open-ended investment company) that is not already required to comply with:

(1) DTR 7.3 (Related party transactions); or

(2) requirements imposed by another EEA State that correspond to DTR 7.3;

must comply with DTR 7.3 as if it were an issuer to which DTR 7.3 applies, subject to the modifications set out in LR 14.3.26R.

14.3.26 R For the purposes of LR 14.3.25R, DTR 7.3 is modified as follows:

(1) DTR 7.3.2R must be read as if the words “has the meaning in IFRS” are replaced by:

“has the meaning:

- (a) in IFRS; or
- (b) where the listed company prepares annual consolidated financial statements in accordance with accounting standards which have been determined to be equivalent to IFRS by the European Commission in accordance with Commission Regulation (EC) No. 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council,
  - (i) in IFRS, or
  - (ii) in the equivalent accounting standards in accordance with which its annual consolidated financial statements are prepared;

at the choice of the listed company.”

- (2) DTR 7.3.8R(2) and (3) do not apply;
- (3) DTR 7.3.9R must be read as follows:
  - (a) as if the words “after obtaining board approval” are replaced by “after publishing an announcement in accordance with DTR 7.3.8R(1)”; and
  - (b) the reference to DTR 7.3.8R must be read as a reference to DTR 7.3.8R as modified by LR 14.3.26R(2); and
- (4) in DTR 7.3.13R the references to DTR 7.3.8R must be read as references to DTR 7.3.8R as modified by LR 14.3.26R(2).

...

## 16 Open-ended investment companies: Premium listing

...

### 16.4 Requirements with continuing application

16.4.1 R An open-ended investment company must comply with:

- (1) LR 9 (Continuing obligations) except LR 9.2.2AR to LR 9.2.2GR, LR 9.2.6BR, LR 9.2.6CR, LR 9.2.6DR, LR 9.2.15R, LR 9.2.20R, LR 9.2.21R, LR 9.2.23R, LR 9.2.24R, LR 9.2.25R, LR 9.3.11R and LR 9.8.4R(14);

...

...

**18 Certificates representing certain securities: Standard Listing**

...

**18.4 Continuing obligations**

...

18.4.2 R A *UK issuer of equity shares* which the certificates represent must comply with the continuing obligations set out in *LR 9 (Continuing obligations)* (other than in *LR 9.2.6CR* and *LR 9.2.6DR*) in addition to the requirements of this section.

18.4.3 R An *overseas company* that is the *issuer* of the *equity shares* which the certificates represent must comply with:

...

(2) the continuing obligations set out in *LR 14.3 (Continuing obligations)* (other than in *LR 14.3.2R*, ~~and *LR 14.3.15R*~~, *LR 14.3.25R* and *LR 14.3.26R*), *LR 18.2.8R* and *LR 18.4.3AR*; and

...

...

**21 Sovereign Controlled Commercial Companies: Premium listing**

...

**21.8 Continuing obligations: Certificates representing shares**

Compliance with *LR 9 (Continuing obligations)*

21.8.1 R A *listed company* must comply with *LR 9 (Continuing obligations)* except:

...

(2) *LR 9.2.5G* to ~~*LR 9.2.6BR*~~ *LR 9.2.6DR*;

...

...

Additional requirements: compliance with the disclosure requirements, ~~and~~ transparency rules and corporate governance rules

...

- 21.8.17A R A listed company that is not already required to comply with:
- (1) DTR 7.3 (Related party transactions); or
  - (2) requirements imposed by another EEA State that correspond to DTR 7.3;
- must comply with DTR 7.3 as if it were an issuer to which DTR 7.3 applies, subject to the modifications set out in LR 21.8.17BR.
- 21.8.17B R For the purposes of LR 21.8.17AR, DTR 7.3 is modified as follows:
- (1) DTR 7.3.2R must be read as if the words “has the meaning in IFRS” are replaced by:  
“has the meaning:
    - (a) in IFRS; or
    - (b) where the listed company prepares annual consolidated financial statements in accordance with accounting standards which have been determined to be equivalent to IFRS by the European Commission in accordance with Commission Regulation (EC) No. 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council,
      - (i) in IFRS, or
      - (ii) in the equivalent accounting standards in accordance with which its annual consolidated financial statements are prepared;at the choice of the listed company.”
  - (2) DTR 7.3.8R(2) and (3) do not apply;
  - (3) DTR 7.3.9R must be read as follows:
    - (a) as if the words “after obtaining board approval” are replaced by “after publishing an announcement in accordance with DTR 7.3.8R(1)”; and
    - (b) the reference to DTR 7.3.8R must be read as a reference to DTR 7.3.8R as modified by LR 21.8.17BR(2); and
  - (4) in DTR 7.3.13R the references to DTR 7.3.8R must be read as

references to *DTR 7.3.8R* as modified by *LR 21.8.17BR(2)*.

...

Insert the following new TR, TR 14, after TR 13 (Transitional Provisions for the UK Corporate Governance Code). The text is not underlined.

**TR 14**                    **Transitional Provisions in relation to DTR 7.3 (Related party transactions)**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.	<i>LR 9.2.6CR</i> <i>LR 9.2.6DR</i> <i>LR 15.4.1R</i> <i>LR 21.4.1R</i>	R	A commercial company, <i>closed-ended investment fund</i> or <i>sovereign controlled commercial company</i> with <i>equity shares</i> that have a <i>premium listing</i> on 10 June 2019 is only required to comply with <i>LR 9.2.6CR</i> and <i>LR 9.2.6DR</i> from the start of the financial year beginning on or after 10 June 2019.	From 10 June 2019 to 31 December 2020	10 June 2019

2.	LR 14.3.25R LR 14.3.26R	R	A <i>company</i> that has a <i>standard listing of equity shares</i> (other than an <i>open-ended investment company</i> ) on 10 June 2019 is only required to comply with LR 14.3.25R and LR 14.3.26R from the start of the financial year beginning on or after 10 June 2019.	From 10 June 2019 to 31 December 2020	10 June 2019
3.	LR 21.8.17AR LR 21.8.17BR	R	A <i>sovereign controlled commercial company with certificates representing shares</i> that have a <i>premium listing</i> on 10 June 2019 is only required to comply with LR 21.8.17AR and LR 21.8.17BR from the start of the financial year beginning on or after 10 June 2019.	From 10 June 2019 to 31 December 2020	10 June 2019

## Annex C

## Amendments to the Disclosure Guidance and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise indicated.

**1B Introduction (Corporate governance)**

...

**1B.1 Application and purpose (Corporate governance)**

...

Purpose: Related party transactions

- 1B.1.9 G The purpose of the requirements in DTR 7.3 is to implement parts of the Shareholder Rights Directive which require companies to have safeguards that apply to material transactions with related parties.

Application: Related party transactions

- 1B.1.10 R DTR 7.3 applies to an issuer:
- (1) any shares of which:
    - (a) carry rights to vote at general meetings; and
    - (b) are admitted to trading; and
  - (2) which is a company within the meaning of section 1(1) of the Companies Act 2006.

[Note: article 1(1) of the Shareholder Rights Directive]

- 1B.1.11 G LR 9.2.6CR, LR 14.3.25R, LR 15.4.1R, LR 21.4.1R and LR 21.8.17AR extend the application of DTR 7.3 (Related party transactions) for certain listed companies which have equity shares or certificates representing shares admitted to the official list maintained by the FCA in accordance with section 74 (The official list) of the Act.

...

Insert the following new section, DTR 7.3, after DTR 7.2 (Corporate Governance Statements). The text is not underlined.

## 7 Corporate governance

...

### 7.3 Related party transactions

#### Transaction

7.3.1 R A reference in this section:

- (1) to a transaction or arrangement by an *issuer* includes a transaction or arrangement by its *subsidiary undertaking*; and
- (2) to a transaction is, unless the contrary intention appears, a reference to the entering into of the agreement for the transaction.

[**Note:** article 9c(7) of the *Shareholder Rights Directive*]

#### Definition of related party

7.3.2 R In *DTR*, a “*related party*” has the meaning in *IFRS*.

[**Note:** article 2(h) of the *Shareholder Rights Directive*]

#### Definition of related party transaction

7.3.3 R In *DTR*, a “*related party transaction*” means:

- (1) a transaction (other than a transaction in the ordinary course of business and concluded on normal market terms) between an *issuer* and a *related party*; or
- (2) an arrangement (other than an arrangement in the ordinary course of business and concluded on normal market terms) pursuant to which an *issuer* and a *related party* each invests in, or provides finance to, another undertaking or asset; or
- (3) any other similar transaction or arrangement (other than a transaction or arrangement in the ordinary course of business and concluded on normal market terms) between an *issuer* and any other *person* the purpose and effect of which is to benefit a *related party*.

[**Note:** article 9c(5) of the *Shareholder Rights Directive*]

7.3.4 R An *issuer* must establish and maintain adequate procedures, systems and controls to enable it to assess whether a transaction or arrangement with a *related party* is in the ordinary course of business and has been concluded on normal market terms. An *issuer* must ensure that the *related party* and any person who is an *associate*, *director* or *employee* of the *related party* does



not take part in any such assessment.

[**Note:** article 9c(5) of the *Shareholder Rights Directive*]

Transactions to which this section does not apply

- 7.3.5 R *DTR 7.3.8R* does not apply to any *related party transaction* which is:
- (1) a transaction or arrangement between the *issuer* and its *subsidiary undertaking* provided that:
    - (a) the *subsidiary undertaking* is wholly owned; or
    - (b) no other *related party* of the *issuer* has an interest in the *subsidiary undertaking*; or
  - (2) a transaction or arrangement regarding remuneration, or certain elements of remuneration, of a *director* of the *issuer*, where the remuneration to be awarded or due to the *director* is in accordance with the *issuer's* directors' remuneration policy as approved by the shareholders of the *issuer* in accordance with section 439A of the Companies Act 2006 and paid in accordance with section 226B of the Companies Act 2006; or
  - (3) a transaction offered to all shareholders of the *issuer* on the same terms where equal treatment of all shareholders and protection of the interests of the *issuer* is ensured.

[**Note:** article 9c(6) of the *Shareholder Rights Directive*]

Material related party transactions

- 7.3.6 G Whether a *related party transaction* is a *material related party transaction* is determined by assessing its size relative to that of the *issuer* proposing to make it. The comparison of size is made by using the *percentage ratios* resulting from applying the *related party test* calculations to a transaction or arrangement. The *related party tests* are set out in *DTR 7 Annex 1*.

[**Note:** article 9c(1) of the *Shareholder Rights Directive*]

- 7.3.7 R In *DTR*:
- (1) “*percentage ratio*” means (in relation to a transaction or arrangement) the figure, expressed as a percentage, that results from applying a calculation under a *related party test* to the transaction or arrangement;
  - (2) “*related party tests*” means the tests set out in *DTR 7 Annex 1*, which are used to determine whether a transaction or arrangement is a *material related party transaction*; and
  - (3) “*material related party transaction*” means a *related party*

*transaction* where any *percentage ratio* is 5% or more.

[**Note:** article 9c(1) of the *Shareholder Rights Directive*]

#### Requirements for material related party transactions

- 7.3.8 R If an *issuer* enters into a *material related party transaction*, the *issuer* must:
- (1) no later than the time when the terms of the transaction or arrangement are agreed, publish an announcement on a *RIS* which sets out:
    - (a) the nature of the *related party* relationship;
    - (b) the name of the *related party*;
    - (c) the date and the value of the transaction or arrangement; and
    - (d) any other information necessary to assess whether the transaction or arrangement is fair and reasonable from the perspective of the *issuer* and of the shareholders who are not a *related party*, including minority shareholders;
  - (2) obtain the approval of its board for the transaction or arrangement before it is entered into; and
  - (3) ensure that any *director* who is, or an *associate* of whom is, the *related party*, or who is a *director* of the *related party*, does not take part in the board's consideration of the transaction or arrangement and does not vote on the relevant board resolution.

[**Note:** article 9c(2) and 9c(4) of the *Shareholder Rights Directive*]

- 7.3.9 R If, after obtaining board approval but before the completion of a *material related party transaction*, there is a material change to the terms of the transaction or arrangement, the *issuer* must comply again separately with *DTR 7.3.8R* in relation to the transaction or arrangement.
- 7.3.10 G The *FCA* would (amongst other things) generally consider an increase of 10% or more in the consideration payable to be a material change to the terms of the transaction.
- 7.3.11 G (1) An *issuer* which complies with *LR 11.1.7R* (Requirements for related party transactions) in relation to a *material related party transaction* will satisfy the requirements of *DTR 7.3.8R* in respect of that transaction or arrangement.
- (2) An *issuer* which complies with *LR 11.1.10R* (Modified requirements for smaller related party transactions) in relation to a *material related party transaction* will satisfy the requirements of *DTR 7.3.8R(1)* in respect of that transaction or arrangement.

- (3) An *issuer* which complies with LR 11.1.7R as modified by LR 21.5.2R (Transactions with related parties: Equity shares) or LR 21.10.4R (Transactions with related parties: certificates representing shares) in relation to a *material related party transaction* will satisfy the requirements of DTR 7.3.8R(1) in respect of that transaction or arrangement.
- (4) An *issuer* which complies with LR 11.1.10R as modified by LR 21.5.2R or LR 21.10.4R in relation to a *material related party transaction* will satisfy the requirements of DTR 7.3.8R(1) in respect of that transaction or arrangement.

7.3.12 G DTR 7.3.8R applies to the variation or novation of an existing agreement between the *issuer* and a *related party* whether or not, at the time the original agreement was entered into, that party was a *related party*.

#### Aggregation of transactions in any 12-month period

- 7.3.13 R (1) If an *issuer* enters into transactions or arrangements with the same *related party* (and any of its *associates*) in any 12-month period, and the *issuer* has not been required to comply with DTR 7.3.8R in respect of the transactions or arrangements, the transactions or arrangements must be aggregated.
- (2) If any *percentage ratio* is 5% or more for the aggregated transactions or arrangements, the *issuer* must comply with DTR 7.3.8R in respect of each of the aggregated transactions or arrangements.

[**Note:** article 9c(8) of the *Shareholder Rights Directive*]

#### Compliance with the disclosure requirements

7.3.14 G An *issuer* should consider its obligations under the *disclosure requirements* in relation to a *related party transaction*.

[**Note:** article 9c(9) of the *Shareholder Rights Directive*]

Insert the following new Annex, DTR 7 Annex 1, after DTR 7.3 (Related party transactions). The text is not underlined.

## 7 The related party tests

### Annex

#### 1

#### Related party tests

1G This Annex sets out the following *related party tests*:

- (1) the gross assets test;
- (2) the profits test;
- (3) the consideration test; and
- (4) the gross capital test.

### The gross assets test

- 2R
- (1) The gross assets test is calculated by dividing the gross assets the subject of the transaction by the gross assets of the *issuer*.
  - (2) The “gross assets” of the *issuer* means the total non-current assets, plus the total current assets, of the *issuer*.
  - (3) For:
    - (a) an acquisition of an interest in an undertaking which will result in consolidation of the assets of that undertaking in the accounts of the *issuer*; or
    - (b) a disposal of an interest in an undertaking which will result in the assets of that undertaking no longer being consolidated in the accounts of the *issuer*,

the “gross assets the subject of the transaction” means the value of 100% of that undertaking’s assets irrespective of what interest is acquired or disposed of.
  - (4) For an acquisition or disposal of an interest in an undertaking which does not fall within paragraph (3), the “gross assets the subject of the transaction” means:
    - (a) for an acquisition, the consideration together with liabilities assumed (if any); and
    - (b) for a disposal, the assets attributed to that interest in the *issuer’s* accounts.
  - (5) If there is an acquisition of assets other than an interest in an undertaking, the “assets the subject of the transaction” means the consideration or, if greater, the book value of those assets as they will be included in the *issuer’s* balance sheet.
  - (6) If there is a disposal of assets other than an interest in an undertaking, the assets the subject of the transaction means the book value of the assets in the *issuer’s* balance sheet.
- 3G
- The *issuer* should consider, when calculating the assets the subject of the transaction, whether further amounts, such as contingent assets or arrangements referred to in *LR* 10.2.4R (indemnities and similar arrangements), should be

included to ensure that the size of the transaction is properly reflected in the calculation.

### The profits test

- 4R (1) The profits test is calculated by dividing the profits attributable to the assets the subject of the transaction by the profits of the *issuer*.
- (2) For the purposes of paragraph (1), “profits” means:
- (a) profits after deducting all charges except taxation; and
  - (b) for an acquisition or disposal of an interest in an undertaking referred to in paragraph 2R(3)(a) or (b), 100% of the profits of the undertaking (irrespective of what interest is acquired or disposed of).
- (3) If the acquisition or disposal of the interest will not result in consolidation or deconsolidation of the target then the profits test is not applicable.
- 5G The amount of loss is relevant in calculating the impact of a proposed transaction under the profits test. An *issuer* should include the amount of the losses of the *issuer* or target, i.e. the *issuer* should disregard the negative when calculating the test.

### The consideration test

- 6R (1) The consideration test is calculated by taking the consideration for the transaction as a percentage of the aggregate market value of all the ordinary shares (excluding *treasury shares*) of the *issuer*.
- (2) For the purposes of paragraph (1):
- (a) the consideration is the amount paid to the contracting party;
  - (b) if all or part of the consideration is in the form of *securities* to be traded on a market, the consideration attributable to those *securities* is the aggregate market value of those *securities*; and
  - (c) if deferred consideration is or may be payable or receivable by the *issuer* in the future, the consideration is the maximum total consideration payable or receivable under the agreement.
- (3) If the total consideration is not subject to any maximum (and the other *related party tests* indicate the transaction to be a transaction where all the *percentage ratios* are less than 5%) the transaction is to be treated as a *material related party transaction*.
- (4) For the purposes of sub-paragraph (2)(b), the figures used to determine consideration consisting of:
- (a) *securities* of a class already *admitted to trading*, must be the aggregate market value of all those *securities* on the last *business day*

before the announcement; and

(b) a new class of *securities* for which an application for *admission to trading* will be made, must be the expected aggregate market value of all those *securities*.

(5) For the purposes of paragraph (1), the figure used to determine market capitalisation is the aggregate market value of all the ordinary *shares* (excluding *treasury shares*) of the *issuer* at the close of business on the last *business day* before the announcement.

7G The *issuer* should consider whether further amounts should be included in the calculation of the consideration to ensure that the size of the transaction is properly reflected in the calculation. For example, if the purchaser agrees to discharge any liabilities, including the repayment of inter-company or third-party debt, whether actual or contingent, as part of the terms of the transaction.

### The gross capital test

- 8R
- (1) The gross capital test is calculated by dividing the gross capital of the company or business being acquired by the gross capital of the *issuer*.
  - (2) The test in paragraph (1) is only to be applied for an acquisition of a *company* or business.
  - (3) For the purposes of paragraph (1), the “gross capital of the *company* or business being acquired” means the aggregate of:
    - (a) the consideration (as calculated under paragraph 6R);
    - (b) if a *company*, any of its *shares* and *debt securities* which are not being acquired;
    - (c) all other liabilities (other than current liabilities) including for this purpose minority interests and deferred taxation; and
    - (d) any excess of current liabilities over current assets.
  - (4) For the purposes of paragraph (1), the “gross capital of the *issuer*” means the aggregate of:
    - (a) the market value of its *shares* (excluding *treasury shares*) and the issue amount of the *debt security*;
    - (b) all other liabilities (other than current liabilities), including for this purpose minority interests and deferred taxation; and
    - (c) any excess of current liabilities over current assets.
  - (5) For the purposes of paragraph (1):
    - (a) figures used must be, for *shares* and *debt security* aggregated for the

purposes of the gross capital percentage ratio, the aggregate market value of all those *shares* (or if not available before the announcement, their nominal value) and the issue amount of the *debt security*; and

- (b) for *shares* and *debt security* aggregated for the purposes of paragraph (3)(b), any *treasury shares* held by the *company* are not to be taken into account.

### Figures used to classify assets and profits

- 9R (1) For the purposes of calculating the tests in this Annex, except as otherwise stated in paragraphs (2) to (7), the figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts or, if an *issuer* has, or will have, published a preliminary statement of later annual results at the time the terms of a transaction are agreed, the figures shown in that preliminary statement.
- (2) If a balance sheet has been published in a subsequently published interim statement then gross assets and gross capital should be taken from the balance sheet published in the interim statement.
- (3) (a) The figures of the *issuer* must be adjusted to take account of transactions completed during the period to which the figures referred to in (1) or (2) relate, and subsequent completed transactions which the *issuer* would have been required to notify to a *RIS* under *LR 10.4* or *LR 10.5* if the *issuer* had a *premium listing*, provided that for such subsequent completed transactions the figures for the transactions are reasonably available to the *issuer*.
- (b) The figures of the target company or business must be adjusted to take account of transactions completed during the period to which the figures referred to in (1) or (2) relate, and subsequent completed transactions which would have been a class 2 transaction or greater for the purposes of the *listing rules* when classified against the target as a whole, provided that for such subsequent completed transactions the figures for the transactions are reasonably available to the target.
- (4) Figures on which the auditors are unable to report without modification must be disregarded.
- (5) When applying the *percentage ratios* to an acquisition by a *company* whose assets consist wholly or predominantly of cash or short-dated *securities*, the cash and short-dated *securities* must be excluded in calculating its assets and market capitalisation.
- (6) The principles in this paragraph also apply (to the extent relevant) to calculating the assets and profits of the target company or business.
- 10G The *FCA* may modify paragraph 9R(4) in appropriate cases to permit figures to be taken into account.

### Anomalous results

- 11G If a calculation under any of the *related party tests* produces an anomalous result, or if a calculation is inappropriate to the activities of the *issuer*, the *FCA* may modify the relevant *rule* to substitute other relevant indicators of size, including industry-specific tests.

### Adjustments to figures

- 12G Where an *issuer* wishes to make adjustments to the figures used in calculating the *related party tests* pursuant to 11G they should discuss this with the *FCA* before the *related party tests* crystallise.

### The profits test: anomalous results

- 13R Paragraph 14R applies to an *issuer* where the calculation under the profits test produces a *percentage ratio* of 5% or more and this result is anomalous.
- 14R An *issuer* may, where each of the other applicable *percentage ratios* are less than 5%, disregard the profits test for the purposes of classifying the transaction.

Amend the following as shown.

### TP 1 Disclosure and transparency rules

#### DTR Sourcebook –Transitional Provisions

(1)	(2) Material to which the Transitional Provision applies	(3)	(4) Transitional Provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...					
<u>31</u>	<u>DTR 7.3 and DTR 7 Annex 1</u>	<u>R</u>	<p><u>An issuer is only required to comply with DTR 7.3 and DTR 7 Annex 1 from the start of the financial year beginning on or after 10 June 2019.</u></p> <p><u>For the purposes of DTR 7.3.13R, only transactions or arrangements which are entered into on or after the start of the financial year beginning on or after 10 June 2019 must be</u></p>	<u>From 10 June 2019 to 31 December 2020</u>	<u>10 June 2019</u>



			<u>aggregated.</u>		
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