
Abbreviations used in this paper

AD	Accounting Directive (2013/34/EU)
BIS	Department for Business, Innovation & Skills
DTR	Disclosure Rules and Transparency Rules sourcebook
EC	European Commission
ESMA	European Securities and Markets Authority
EU	European Union
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
LR	Listing Rules sourcebook
RTS	Regulatory Technical Standard
TD	Transparency Directive (2004/109/EC)
TDAD	Transparency Directive Amending Directive (2013/50/EU)
the Treasury	HM Treasury

1. Overview

Introduction

- 1.1** On 20 March 2015 the FCA published a joint Consultation Paper (CP)¹ with HM Treasury (the Treasury) setting out the proposals to implement the Transparency Directive Amending Directive 2013/50/EU (TDAD) through changes to the Financial Services and Markets Act 2000 (FSMA) and the FCA's Disclosure Rules and Transparency Rules (DTRs). In this Policy Statement the Treasury and the FCA summarise feedback from that CP and set out respective responses to it.
- 1.2** The FCA also took the opportunity to propose other miscellaneous changes to the DTRs in CP15/11 which were not directly related to TDAD implementation but were required to clarify or improve the current regime. In this Policy Statement, we set out the feedback to those proposals and the FCA's response to it.
- 1.3** The new DTRs will come into force on 26 November 2015.

Who does this affect?

This Policy Statement will be of interest to:

- issuers of securities admitted to trading on a regulated market where the UK acts as home or host Member State and the FCA's DTRs apply
- firms or persons investing or dealing in listed securities or securities admitted to trading on a regulated market or prescribed market
- listed companies who are required by LR 9.2.6BR, LR 14.3.23R or LR 18.4.3R to comply with DTR 4, DTR 5 and DTR 6 as if they were an issuer for the purposes of the DTRs
- issuers of securitised derivatives who, following LR 19.4.11BR, the FCA considers should comply with DTR 4, DTR 5 and DTR 6 as if they were an issuer of debt securities as defined in the DTRs
- issuers of securities admitted to trading on a prescribed market in the UK
- firms advising issuers

¹ www.fca.org.uk/static/documents/consultation-papers/cp15-11.pdf

- firms advising persons investing or dealing in listed securities or securities admitted to trading on a regulated market or prescribed market
- primary information providers

Is this of interest to consumers?

- 1.4** This Policy Statement will be of interest to consumers who directly or indirectly deal and invest in:
- listed securities
 - securities admitted to trading on a regulated market or prescribed market

Context

- 1.5** To meet the deadline set out in the Directive, the TDAD will be implemented in the UK on 26 November 2015 through changes to FSMA and the FCA's DTRs. The changes will affect all issuers of securities and vote holders who are subject to these rules. The FCA's other changes to the DTRs, which were proposed in CP15/11, will also take effect on this date.

Summary

- 1.6** The FCA received eight responses to CP15/11 from four individual firms and four trade associations.
- 1.7** Responses were mostly supportive of the Treasury's and the FCA's proposed approach to implementing the TDAD.
- 1.8** In Chapter 2 the Treasury summarises the feedback received in respect of its proposals and explain its responses.
- 1.9** In Chapter 3 the FCA summarises the feedback received in respect of the TDAD implementation proposals and explain its responses. The FCA received some technical and drafting comment, where these have been incorporated into the new rules it is detailed in this Policy Statement.
- 1.10** Both the Treasury and the FCA are grateful for the feedback received in respect of the TDAD implementation and have decided to proceed with proposals as outlined in CP15/11 except for the FCA's proposed approach to implementing the requirement for annual and half yearly financial reports to remain publicly available for at least 10 years. Following publication by ESMA of the updated TD Questions and Answers paper on 22 October 2015² we will align with the answer provided to Question 22 in that document (which we detail in our responses) rather than proceed with our original proposal set out in CP15/11.
- 1.11** The FCA also summarises the feedback received in respect of its proposals to make other changes to the DTRs in Chapter 4. We received feedback on the proposed treatment of stock-

² www.esma.europa.eu/content/QAs-TD (page 14)

lending and how the new disclosure requirements will work practically. The FCA has decided to proceed with the proposals as outlined in CP15/11 aside from the proposed notification thresholds for stock-lending transactions. Following feedback it became apparent that applying a different notification threshold to stock-lending transactions would create a disproportionate burden on vote holders when trying to establish which holdings should be notified at a particular threshold. Consequently, stock-lending transactions will be subject to the same notification requirements as all other holdings within scope of the DTRs.

- 1.12** Chapter 5 of this Policy Statement is intended to highlight a forthcoming consultation where the Treasury have requested that the FCA prescribe a reporting format for the Transparency Directive (TD) reports on payments to governments. This proposal seeks to address the Government's commitment made in the Open Government Partnership's National Action Plan (NAP2) which stated that, in 2016, 'UK listed and UK registered extractive companies will start to publish data under the EU Directives in an open and accessible format'.

What do you need to do next?

- 1.13** The new DTRs will come into force on 26 November 2015 and any changes to the current DTR regime will become effective on that day.

2. Summary of feedback and the Treasury's responses

- 2.1** In this chapter the Treasury outlines the feedback received to its proposals made in CP15/11 and set out its responses.

Feedback on the questions asked in CP15/11

- 2.2** In CP15/11 the Treasury asked six questions:

HMT Q1: *Do you agree that relying on the existing court-based procedure in section 380 of FSMA is adequate to enable the FCA to carry out the sanctioning powers referenced in article 28b(1)(b) of the TD?*

HMT Q2: *Do you agree with the approach taken to make the UK compliant with the requirements of article 28(2) of the TD relating to applying sanctions to 'the members of administrative, management or supervisory bodies of the legal entity concerned'?*

HMT Q3: *Is the approach envisaged by which the FCA can suspend voting rights through application to the Court appropriate? Are there alternative approaches that would be more suitable?*

HMT Q4: *Do you think that the FCA should only be empowered to suspend voting rights in the case of the most serious breaches, as this consultation is proposing?*

HMT Q5: *How should a 'most serious breach' be defined in the transposition of the TDAD?*

HMT Q6: *Do you agree with the Treasury's proposed approach to transposing the requirements relating to the publication of decisions?*

- 2.3** The Treasury also made a copy of the draft statutory instrument available (on request) for comment between 3 August and 4 September 2015.

Summary of feedback and the Treasury's responses

HMT Q1: *Do you agree that relying on the existing court-based procedure in section 380 of FSMA is adequate to enable the FCA to carry out the sanctioning powers referenced in article 28b(1)(b) of the TD?*

- 2.4 Consultation respondents agreed with the Treasury's proposal on implementing a new article 28b(1)(b) of the TD.

HMT Q2: *Do you agree with the approach taken to make the UK compliant with the requirements of article 28(2) of the TD relating to applying sanctions to 'the members of administrative, management or supervisory bodies of the legal entity concerned'?*

- 2.5 Consultation respondents agreed with the Treasury's proposal on implementing a new article 28(2) of the TD.

HMT Q3: *Is the approach envisaged by which the FCA can suspend voting rights through application to the Court appropriate? Are there alternative approaches that would be more suitable?*

- 2.6 One respondent noted that the Treasury's approach to transposing the suspension of voting rights seemed proportionate. Another stated they felt it appropriate for the FCA to apply to the Court to suspend voting rights.

HMT Q4: *Do you think that the FCA should only be empowered to suspend voting rights in the case of the most serious breaches, as this consultation is proposing?*

- 2.7 All respondents who answered this question agreed that the FCA should only be empowered to suspend voting rights in the case of the most serious breaches.

HMT Q5: *How should a 'most serious breach' be defined in the transposition of the TDAD?*

- 2.8 Two respondents provided detailed responses to this question. They suggested that the FCA should take a range of factors into account, including whether breaches were intentional, how inaccurate the relevant notification was, market reaction to the event, the size of the relevant holding and the length of time over which the breach occurred.

HMT Q6: *Do you agree with the Treasury's proposed approach to transposing the requirements relating to the publication of decisions?*

- 2.9 One respondent suggested that the Treasury's approach seems reasonable on this aspect. Another asked for the default position under rules to be that decisions will be anonymised and any variance subject to an explicit decision-making process.

- 2.10** The new article 29 of the TD sets out the provisions relating to publication of decisions by competent authorities. The Treasury's approach to transposition of the new article is to insert the new provision (section 391B) alongside provisions of FSMA which already deal with the publication of similar decisions (see sections 391 and 391A).

Draft statutory instrument

- 2.11** A single response was received. It commented on the proposed amendments to section 89F(1)(b)(iii) of FSMA and asked whether the provision should refer to 'article 13' of the TD (rather than to 'article 13(1)(a) or (b)') to include the list of financial instruments drawn up by ESMA under article 13(1b). It also suggested that the new section 89NA(4) of FSMA, which permits the FCA to apply to the court to suspend the voting rights in the event of a breach of the TD, should take into account the length of time the breach has persisted.

The Treasury's response:

We welcome the views of respondents to the full consultation, particularly around the issue of defining what is meant by 'most serious breaches'. We have taken on board these comments for the purposes of drafting the provision of the statutory instrument which permits the FCA to apply to the court for a suspension of voting rights.

Regarding the comments on the text of the draft statutory instrument, we have made an amendment to the regulation governing voting rights suspension orders to reflect the amount of time taken for a breach to be remedied³. However, we consider the draft wording in section 89F(1)(b)(iii), which refers to article 13(1)(a) or (b) of the TDAD, to be sufficient to capture the financial instruments listed by ESMA under article 13(1b) of the TD.

³ For the full text of the Statutory Instrument, please follow this link. www.legislation.gov.uk/ukxi/2015/1755/pdfs/ukxi_20151755_en.pdf

3.

Summary of feedback to the TDAD implementation proposals and the FCA's responses

- 3.1** In this chapter we, the FCA, outline the feedback received to the FCA proposals made in CP15/11 and set out our responses.
- 3.2** In CP15/11 the FCA asked 26 questions in total. Questions 1 to 18 and Question 23 related to TDAD implementation. The remaining questions concerned other DTR changes. In relation to the TDAD we asked:
- Q1:** *Do you agree with the proposal to delete DTR 5.3.1R(2), DTR 5.3.1R(3), DTR 5.3.1R(4) and DTR 5.3.1R(5) and to include the new RTS?*
- Q2:** *Do you agree with our proposal to include a new definition of 'trading book' for the purposes of the DTRs?*
- Q3:** *Do you agree with the proposal to make a consequential amendment to DTR 5.3.1R(1)(b) to remove the cross reference to the current client-serving intermediary exemption and to remove the exception for non-UK issuers?*
- Q4:** *Do you agree with our proposal to delete DTR 5.7.1R(4) and reword DTR 5.7.1R(3) to reflect the article 13(1)(a) and (b) text, to clarify DTR 5.7.1R(1), and to include new notification requirements in DTR 5.3.5R to reflect the article 13(1) text?*
- Q5:** *Do you agree with our proposal to delete DTR 5.3.1R(2A) and DTR 5.3.1AG? Do you agree with our proposal to delete FCA specific guidance set out in DTR 5.3.3G(2) and rely on the new RTS? Do you agree with our proposal to include a new DTR5.3.2AG and to make amendments to DTR 5.3.2R(1) and to remove the link to MiFID in DTR5? Do you agree with our proposal to delete DTR 5.8.2R(4) and include a new DTR5.3.3AR and rely on the new RTS?*

- Q6:** *Do you agree with our proposal to reflect the amendments to the TD and extend the deadline to publish half-yearly financial reports and the period of time for which financial reports are publicly available, and to make amendments to DTR 4.1.4R, DTR 4.2.2R(2) and DTR 4.2.2R(3)?*
- Q7:** *Do you agree with the proposal to apply revised DTR 4.1.4R and DTR 4.2.2R(3) only to reports published on or after the date new rules enter into force?*
- Q8:** *Do you agree with our proposal to update DTR 6.4.1R and DTR 6.4.2R, to include a new DTR 6.4.3R and DTR 6.4.4R and to amend the Glossary definitions of 'Home State' and 'Host State' to reflect the changes to the rules on home Member State?*
- Q9:** *Do you agree with our proposal for a new transitional provision DTR TP1(26)?*
- Q10:** *Do you agree with our proposal to implement the stabilisation exemption in a new rule DTR 5.1.3R(7)?*
- Q11:** *Do you agree with our proposal to amend DTR 5.1.3R(1),(2),(3) and (4) to reflect new article 13(4) and the revised article 9(6) of the TD?*
- Q12:** *Do you agree with our proposal to amend the Glossary definition of 'issuer' to reflect the amendments made to the definition of 'issuer' in the TD and to make a consequential change to the Glossary definition of 'shareholder'?*
- Q13:** *Do you agree with proposal to delete DTR 6.1.2R and rely on the UK provisions which implement the relevant parts of the Shareholders' Rights Directive and Market Abuse Directive requirements?*
- Q14:** *Do you agree with the consequential amendment proposed to LR 17.5.2R?*
- Q15:** *Do you agree with our proposal to delete DTR 6.1.11R following the removal of the provision from the TD?*
- Q16:** *Do you agree with the consequential and minor changes we propose to DTR 5.8.3R and DTR 4.4.1R?*
- Q17:** *Do you agree with the amendments proposed to be made to the Glossary definitions?*

Q18: *Do you agree with our analysis that, other than the transitional provisions in respect of DTR 6.4.2R, DTR 6.4.3R and DTR 6.4.4R, no other transitional provisions are required in the DTRs as a result of the TDAD amendments to the TD?*

Q23: *Do you agree with our analysis of removing the client-serving intermediary exemption from the DTRs?*

Summary of feedback to the proposed TDAD implementation and FCA responses

Q1: *Do you agree with the proposal to delete DTR 5.3.1R(2), DTR 5.3.1R(3), DTR 5.3.1R(4) and DTR 5.3.1R(5) and to include the new RTS?*

3.3 Respondents agreed with the proposal to reproduce the new Regulatory Technical Standard (RTS) in the Handbook. One respondent suggested that it could be helpful to include additional guidance to explain references to the articles of the TD in the new RTS and also suggested, for example, re-organising the note at the end of DTR 5.1.3R, which sets out certain voting rights to be disregarded, to make it clear from which article of the TD each provision derives.

Q2: *Do you agree with our proposal to include a new definition of “trading book” for the purposes of the DTRs?*

3.4 We did not receive any responses disagreeing with this proposal or other substantive comments.

Q3: *Do you agree with the proposal to make a consequential amendment to DTR 5.3.1R(1)(b) to remove the cross reference to the current client-serving intermediary exemption and to remove the exception for non-UK issuers?*

3.5 One respondent agreed with the proposal but suggested removing the reference to ‘qualifying financial instrument’ throughout Chapter 5 of the DTRs and instead redrafting DTR 5.3.1R(1) (a) and (b) to reflect the wording of article 13(1)(a) and (b) of the TD⁴ which prescribes the financial instruments requiring notification under the revised TD, including ‘qualifying financial instruments’.

3.6 The respondent suggested this amendment would allow for the deletion of DTR 5.3.2R which currently defines qualifying financial instruments by cross referring to article 13(1) of the TD and article 11(1) of the TD Implementing Directive 2007/14/EC (which have been revised by the TDAD).

⁴ Article 13(1)...

(a) financial instruments that, on maturity, give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to his right to acquire, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market;

(b) financial instruments which are not included in point (a) but which are referenced to shares referred to in that point and with economic effect similar to that of the financial instruments referred to in that point, whether or not they confer a right to a physical settlement.

Q4: Do you agree with our proposal to delete DTR 5.7.1R(4) and reword DTR 5.7.1R(3) to reflect the article 13(1)(a) and (b) text, to clarify DTR 5.7.1R(1), and to include new notification requirements in DTR 5.3.5R to reflect the article 13(1) text?

- 3.7** Following the response to Q3, the same respondent suggested redrafting proposed new DTR 5.3.5R where we set out the content requirement of a notification. They suggested changing the wording to read a notification should include a 'breakdown between holdings of financial instruments' rather than the wording we propose requiring a notification to include 'a breakdown by type of financial instruments' which has been copied from article 13(1) of the TD.
- 3.8** No further comments were received on the other proposed rule changes in Q4.

The FCA's response

We note the request for additional guidance in relation to the TD article references included in the RTS. We have reproduced the RTS text for the convenience of the reader and included this in the Handbook to avoid having to cross reference a separate document.

In response to the comment received regarding the use of 'qualifying financial instrument', we intended to retain our use of this wording in the DTRs as it is a commonly understood term in the existing UK regime. However, we agree with the proposal to revise DTR 5.3.1R to reflect the wording in article 13(1)(a) and (b). This will also ensure financial instruments with a notification obligation are clearly set out in one rule.

As a result of this feedback, we will remove any reference to 'qualifying financial instrument' from DTR 5 and replace them with a reference to financial instruments within DTR 5.3.1R(1)(a). Consequently, we will need to delete paragraphs (1) and (2) from DTR 5.3.2R.

We note the feedback received in relation to DTR 5.3.5R. However, we consider that the suggested wording of 'breakdown between holdings of financial instruments' could potentially have a narrower meaning than the TDAD text which currently reads 'breakdown by type of financial instruments'. A breakdown by type means not only the disclosure of the different types of instruments held as between those which fall within article 13(1)(a) and article 13(1)(b), but also refers to the different types of instrument held within each of those categories. We will proceed with our proposal to copy out directly the article 13(1) TDAD text here to ensure we implement the Directive requirements fully.

Regarding our proposal outlined in Q2, article 9(6) of the TD defines 'trading book' by reference to article 11 of Directive 2006/49/EC of the European Parliament and of the Council on the capital adequacy of investment firms and credit institutions (the Capital Adequacy Directive). The Capital Adequacy Directive has been repealed and replaced by Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment

firms (CRD IV) and Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms (EU CRR). We consider that article 4.1(86) of the EU CRR corresponds with article 11 of the Capital Adequacy Directive for the purposes of the definition of 'trading book'. Accordingly, we have amended the new Glossary definition of 'trading book' for the purposes of the DTRs.

We have also made a consequential amendment to DTR 5.4.5R, which sets out the requirements where a parent undertaking intends to benefit from article 12(4) and (5) exemptions in relation to financial instruments, to reflect the change in the scope of article 13 of the TD.

In addition, new DTR 5.7.1AR has been inserted to clarify the notification requirements where a person who has notified voting rights relating to financial instruments acquires the underlying shares. The new DTR 5.7.1AR reflects the text of article 13a(2) of the revised TD.

All RTS text which has been reproduced in DTR 5 has been updated from the draft version included in CP15/11 (which reproduced the draft text annexed to the ESMA Final Report)⁵ to reflect the text adopted by the Commission in Commission Delegated Regulation (EU) 2015/761 in December 2014 and published in the Official Journal in May 2015.⁶

Q5: Do you agree with our proposal to delete DTR 5.3.1R(2A) and DTR 5.3.1AG? Do you agree with our proposal to delete FCA specific guidance set out in DTR 5.3.3G(2) and rely on the new RTS? Do you agree with our proposal to include a new DTR 5.3.2AG and to make amendments to DTR 5.3.2R(1) and to remove the link to MiFID in DTR 5? Do you agree with our proposal to delete DTR 5.8.2R(4) and include a new DTR 5.3.3AR and rely on the new RTS?

- 3.9** One respondent asked for specific guidance as to whether nil-paid rights (and other instruments relating to unissued shares) are out of scope or within scope and not exempt. It was suggested that rather than deleting DTR 5.3.3G(2)(a) the FCA could redraft this and reproduce wording to mirror paragraph 142⁷ of the ESMA Final Report. The respondent thought it would be helpful to retain a broad overview of what 'similar economic effects' may mean and suggested that this could be provided in separate guidance or, preferably, within DTR 5.
- 3.10** Another respondent asked for guidance on whether a financial instrument with similar economic effect to, but which is not, a qualifying financial instrument within DTR 5.3.2R(1), (regardless of whether or not it confers a right to physical settlement) must refer to shares to which voting

5 ESMA Final report on draft Regulatory Technical Standards on major shareholdings and an indicative list of financial instruments subject to notification requirements under the revised Transparency Directive
http://www.esma.europa.eu/system/files/20141187_final_report_on_draft_rts_under_the_transparency_directive.pdf

6 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R0761>

7 http://www.esma.europa.eu/system/files/2014-1187_final_report_on_draft_rts_under_the_transparency_directive.pdf
142. First, ESMA notes that the majority of respondents have not provided contributions regarding a general concept of "economic effect similar" to that of shares or entitlements to acquire shares. ESMA has proposed that a financial instrument should be considered economically equivalent to a share or an entitlement to acquire a share for instance when such an instrument exposes the holder to the benefits of an upward movement and/or the damages of a downward movement of the price of these shares (i.e., the value of the financial instrument is positively correlated with the underlying equity instrument). Such an instrument gives the holder the potential to gain an economic advantage in acquiring, or gaining access to, the underlying shares.

rights are attached, already issued, and of a relevant issuer. The respondent referenced the FSA approach referred to in Question 15 of the *Disclosure of Contracts for Difference – Questions and Answers*⁸ paper, published in November 2010, which stated:

- 3.11** *15. Are financial instruments covered by the new rules if they relate to shares that are not yet issued?*
- 3.12** *Yes. We believe instruments such as convertible bonds and warrants can be considered to be 'referenced' to shares in issue, although they may only give a legal right to acquire shares that are not yet issued. Such instruments ultimately allow for voting rights in the issuer to be acquired, and therefore have similar economic effects to qualifying instruments.*
- 3.13** *These instruments can be used to build stakes in companies (or be part of strategies including other instruments such as Contracts for Differences – CfDs), so excluding them from scope would potentially undermine the new regime's objectives.*
- 3.14** *Where notifications of convertibles are made, the denominator used by the issuer should remain unchanged and be that in the most recent Disclosure Rules and Transparency Rules (Handbook) DTR 5.6 disclosure by the issuer.*
- 3.15** The respondent asked the FCA to confirm whether this disclosure position for financial instruments, referring to shares not yet issued, and including convertible bonds and warrants, will change on TDAD implementation in the UK.
- 3.16** The respondent also noted from ESMA's consultation⁹ they propose that financial instruments with similar economic effect, which are referenced to unissued shares, do not require disclosure (see pages 40-41). This includes convertible bonds.
- 3.17** The respondent asked the FCA to confirm that ESMA's disclosure approach regarding financial instruments with similar economic effect will apply in the UK on TDAD implementation.
- 3.18** It was also noted that DTR 5.3.1R(1)(b) refers to 'shares', as defined in the Glossary to the FCA's Handbook, when setting out the notification requirements for financial instruments. For the purposes of DTR 5, DTR 5.1.1R(3) limits that definition to shares which are already issued and carrying voting rights. The respondent asked the FCA to confirm that the proposed deletion of 'already issued' from DTR 5.3.2R(1) does not mean that, after TDAD implementation in the UK, there will be any change to the current position that qualifying financial instruments must relate to already issued shares to require disclosure under DTR 5.3.1R(1)(a).
- 3.19** The FCA were also asked to provide guidance in the Handbook to specify that securities received as collateral should not be considered as a financial instrument with similar economic effect for the purposes of the DTRs.

The FCA's response

The TD has been revised by the TDAD and financial instruments with similar economic effect are now within scope. We are required to implement the new EU Directive requirements which supersede both the existing DTR provisions implemented in 2009 and also the FSA 'Disclosure of Contracts for Difference

⁸ www.fsa.gov.uk/pubs/ukla/disclosure.pdf

⁹ www.esma.europa.eu/content/ESMA-consults-major-shareholders-disclosures

Questions and Answers'. While the new EU regime is fundamentally similar to the old UK regime there are some differences – more of these may become apparent as practice develops. In these instances the new EU Directive requirements must be met.

Under the revised TD regime each financial instrument should be considered in the context of the wording in article 13(1), DTR 5 and the ESMA indicative list¹⁰ to assess whether a notification requirement exists.

For financial instruments relating to already issued shares, please see paragraphs 148 and 149 of the ESMA Final Report¹¹. The report states that 'for the avoidance of doubt, ESMA clarifies that only financial instruments relating to already issued shares have to be disclosed'.

In respect of the request for guidance in relation to securities received as collateral, article 10(c) of the TD remains unaltered and the article 9 notification requirements apply 'when voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them'. This provision is set out in DTR 5.2.1R(c), we then provide further guidance in DTR 5.2.3G which states this rule is 'relevant in determining whether a person is an indirect holder of qualifying financial instruments which result in an entitlement to acquire shares'.

Q6: Do you agree with our proposal to reflect the amendments to the TD and extend the deadline to publish half-yearly financial reports and the period of time for which financial reports are publicly available, and to make amendments to DTR 4.1.4R, DTR 4.2.2R(2) and DTR 4.2.2R(3)?

Q7: Do you agree with the proposal to apply the revised DTR 4.1.4R and DTR 4.2.2R(3) only to reports published on or after the date new rules enter into force?

3.20 We did not receive any responses disagreeing with the proposals referred to in Q6 and Q7 or other substantive comments. However, on 22 October 2015 ESMA published the revised TD Questions and Answers.¹² Question 22 addresses this point and we have outlined our response below.

Q8: Do you agree with our proposal to update DTR 6.4.1R and DTR 6.4.2R, to include a new DTR 6.4.3R and DTR 6.4.4R and to amend the Glossary definitions of 'Home State' and 'Host State' to reflect the changes to the rules on home Member State?

¹⁰ www.esma.europa.eu/content/Indicative-List-Financial-Instruments

¹¹ 148. ESMA agrees with the respondent who observes that TD Article 13(1)(a) restricts notification requirements to financial instruments that give the holder the right to acquire or the discretion as to his right to acquire shares to which voting rights are attached, already issued. It is stated in TD Article 13(1)(b) that financial instruments with similar economic effect have to be referenced to shares referred to in point (a). Accordingly, all disclosure of financial instruments under TD Article 13(1) should be limited to financial instruments relating to already issued shares.

149. On this basis and for the avoidance of doubt, ESMA clarifies that only financial instruments relating to already issued shares have to be disclosed.

¹² www.esma.europa.eu/content/QAs-TD (page 14)

- 3.21** One respondent agreed with the proposal but suggested technical and drafting amendments should be made to the Glossary definition of 'Home State'.

The respondent also suggested drafting changes to DTR 6.4.1R(1) and DTR 6.4.4R.

Q9: *Do you agree with our proposal for a new transitional provision DTR TP1(26)?*

Q10: *Do you agree with our proposal to implement the stabilisation exemption in a new rule DTR 5.1.3R(7)?*

- 3.22** We did not receive any responses disagreeing with the proposals referred to in Q9 and Q10 other than a very minor drafting suggestion to DTR TP1(26).

Q11: *Do you agree with our proposal to amend DTR 5.1.3R(1),(2),(3) and (4) to reflect the new article 13(4) and the revised article 9(6) of the TD?*

- 3.23** One respondent suggested that the proposed use of the wording 'shares underlying financial instruments' in DTR 5.1.3R(1)(b), (2)(b) and (3)(b) should be changed to "shares related to financial instruments" to be consistent with the reference to recital 2 of the RTS in DTR 5.1.4A EU.

The respondent also suggested further drafting amendments to DTR 5.1.3R(4)(b).

Q12: *Do you agree with our proposal to amend the Glossary definition of 'issuer' to reflect the amendments made to the definition of 'issuer' in the TD and to make a consequential change to the Glossary definition of 'shareholder'?*

- 3.24** One respondent noted that paragraphs (2A) and (2B) of the Glossary definition of 'issuer' do not copy out the revised definition in article 2.1(d) of the amended TD and suggested that the Glossary definition of 'person' is wider than the entities specified in the amended TD definition of 'issuer'.

The FCA's response

For the technical and drafting comments received in response to Q8, we have considered these carefully and revised the definition of 'Home State' to reflect the comments received, where appropriate.

Regarding the response to Q11, we note the suggestion to change the wording in DTR 5.1.3R(1)(b), (2)(b) and (3)(b) to read 'shares related to financial instruments' rather than 'shares underlying financial instruments'. Recital 2 of the RTS reproduced in DTR 5.1.4A EU refers to aggregating 'voting rights relating to shares with voting rights related to financial instruments'. It does not reference shares related to financial instruments but rather the voting rights related to financial instruments. Consequently, we will keep the original proposed wording which reflects the language in article 13(1a) of the revised TD.

We are grateful for the feedback received in respect of the Glossary definition proposal referred to in Q12. However, we use the Glossary definition of 'person'

to implement the natural person element of the revised TD definition of 'issuer' in article 2. It also implements the new interpretative provision in article 2(2a)¹³ of the revised TD which states that references to legal entities in the TD are to be understood as including registered business associations without legal personality and trusts. The use of the Glossary definition of 'person' in the Glossary definition of 'issuer' is also consistent with the approach taken by the Treasury for the amendment it has made in its statutory instrument to the definition of 'issuer' in section 102A(6)(aa) of FSMA.

We have also made a consequential amendment to DTR 5.1.4R(2) as this provision for market makers should now refer to financial instruments within DTR 5.3.1R(1) as well as referring to shares, reflecting the change to the market maker exemption in DTR 5.1.3R(3), which has been extended to cover financial instruments.

The TDAD extended the length of time half yearly and annual financial reports should be made publicly available from at least 5 years to at least 10 years. This requirement also applies to the TD reports on payments to governments reports. In CP15/11 we proposed applying the revised timeframe only to reports published on or after the date the new rules enter into force. However, on 22 October ESMA published the updated TD Questions and Answers paper. Question 22 addresses implementation of the new requirement and asks 'From what date, should an issuer apply the 10 year period requirements for the information to remain publicly available under Articles 4(1), 5(1) and 6 of the TD?'. The response states that 'for those reports that were made publicly available less than 5 years before the transposition date, the reports should remain publicly available for at least 10 years. This period of time will start counting from the date the reports were originally published and not the transposition date. For those reports that were made publicly available 5 years or more before the transposition date, the requirement of the amending Directive will not apply'. Therefore, we will align with this approach rather than our original policy proposal set out in CP15/11.

Q13: *Do you agree with the proposal to delete DTR 6.1.2R and rely on the UK provisions which implement the relevant parts of the Shareholders' Rights Directive and Market Abuse Directive requirements?*

Q14: *Do you agree with the consequential amendment proposed to LR 17.5.2R?*

Q15: *Do you agree with our proposal to delete DTR 6.1.11R following the removal of the provision from the TD?*

Q16: *Do you agree with the consequential and minor changes we propose to DTR 5.8.3R and DTR 4.4.1R?*

Q17: *Do you agree with the amendments proposed to be made to the Glossary definitions?*

¹³ 'Any reference to legal entities in this Directive shall be understood as including registered business associations without legal personality and trusts.' (article 2(2a) 2013/50/EU)

- 3.25** We did not receive any responses against the proposals referred to in Q13 to Q17 or other substantive comments in relation to these questions.

Q18: *Do you agree with our analysis that, other than the transitional provisions in respect of DTR6.4.2R, DTR6.4.3R and DTR6.4.4R, no other transitional provisions are required in the DTRs as a result of the TDAD amendments to the TD?*

- 3.26** One respondent commented that consideration needs to be given to transitional provisions for DTR 5. They also observed that there will be some changes to the current position which issuers will need to consider. The respondent asked if all investors will have to consider their existing holdings and re-notify as necessary within the few business days after the date the new rules come into force, or will the new provisions only apply to changes in interests from and after that date?
- 3.27** Another respondent noted that the TDAD does not provide a grace period within which implementation can be achieved. Given the need to amend systems to incorporate TDAD changes to calculation methodology, including but not limited to, in-scope instruments and the consequential changes to presentation format required by the FCA (and other Member State regulators) in making DTRs, the respondent urged the FCA to publish final rules as soon as practicable.

The FCA's response

The implementation deadline for the TDAD is 26 November 2015 and the new rules come into force on that day. We cannot provide additional transitional provisions beyond those proposed in CP15/11 as this would amount to failing to implement the Directive. We fully appreciate the concern expressed in the feedback received and have endeavoured to publish the new rules as soon as we can to ensure smooth implementation with a minimum impact for issuers. However, the timing of the publication of the new rules has been dependent on the FCA receiving the relevant rule-making powers from the Treasury and our timetable has been subject to that process.

It is expected that investors will need to consider their holdings and re-notify as necessary within the timeframes set out in the DTRs when the new rules come into force.

Q23: *Do you agree with our analysis of removing the client-serving intermediary exemption from the DTRs?*

- 3.28** We did not receive any responses disagreeing with the analysis referred to in Q23 or any other substantive comments in relation to this question.

4. Summary of feedback to the proposals for other DTR changes and the FCA's responses

4.1 In relation to the other proposed DTR changes the FCA asked the following questions:

- Q19:** *Do you agree with our proposed treatment of stock-lending transactions for the purposes of the article 9 notification regime (set out in the proposed DTR 5.1.5R(1)(e)) and our proposal to apply the EU minimum thresholds?*
- Q20:** *Do you agree with our proposed deletion of DTR 5.1.5R(1)(d) and our proposed amendment to DTR 5.1.5R(2)(e), which allow all investment managers to make vote holder notifications at the EU minimum thresholds?*
- Q21:** *Do you agree with our proposal to amend DTR 4.4.8R, DTR 5.11.4R and DTR 6.1.16R to reference the article 23(1) provision in its entirety and to make consequential amendments to DTR 4.4.9G, DTR 5.11.5G and DTR 6.1.17G?*
- Q22:** *Do you agree with our proposal to delete DTR 5.11.6R, to make the consequential change to DTR 5.1.2R to remove reference to the article 23 exemption and to include new provisions in DTR 5.5.1AR, DTR 5.6.1CR and DTR 5.8.12R(3) to make reference to the third country exemption in the revised DTR 5.11.4R?*
- Q24:** *Do you agree with our analysis of the impact of applying the notification regime to stock lending transactions?*
- Q25:** *Do you have any further comments on the costs of notifying stock lending transactions?*
- Q26:** *Do you agree with our analysis of the impact of deleting DTR 5.1.5R(1)(d) and amending DTR 5.1.5R(2)(e)?*

Summary of feedback to other proposed DTR changes and FCA responses

Q19: Do you agree with our proposed treatment of stock lending transactions for the purposes of the article 9 notification regime (set out in the proposed DTR 5.1.5R(1)(e)) and our proposal to apply the EU minimum thresholds?

- 4.2** One respondent suggested it would be helpful to include (by way of guidance) worked examples on whether disclosures of stock loan transactions need to be aggregated with other holdings and, if so, how this works in practice.
- 4.3** Another respondent asked if the final rules could state whether the voting rights held under the elements of DTR 5.1.5R(1) should be assessed separately or cumulatively.
- 4.4** A different respondent noted our acknowledgement that the proposed change in treatment of stock lending transactions is not in response to any identified market failings and that the intent is simply to harmonise with other Member States' implementation of the Directive. The respondent also agreed that stock lending agreements do result in title transfer. However, they were of the view that this focusses attention on the individual legs of the transaction and ignores that the change in ownership is temporary and intended to be reversed. In proposing notification by the lender and borrower the respondent suggested it is highly unlikely that such transactions will result in similar but opposite DTR notifications being filed by the lender and borrower. The respondent suggested that this would result in additional complexity for DTR filers and lesser rather than enhanced transparency for issuers and the market in understanding the relevant content of the notifications. The respondent also expressed concern that, from a practical perspective, the current TR1 form could be completed in multiple ways for a single disclosure.
- 4.5** Another respondent focused on the practical applications of the proposed revision to the notification regime and provided some useful examples which we have carefully considered.

The FCA's response

We note the request to clarify whether stock-lending transactions should be aggregated with other holdings. Stock-lending transactions are within scope of the TD and the aggregation principles apply to those holdings in the same way as they apply to all holdings within scope of the TD disclosure regime. The new DTR 5.1.4A EU and DTR 5.1.4B EU reproduce articles 2 and 3 of Commission Delegated Regulation (EU) 2015/761 that set out certain specific requirements of aggregation. However, the requirement to aggregate holdings is set out in the TD itself.

When considering this feedback it became clear that the requirement to aggregate stock lending transactions with other holdings would make it very difficult to apply a different notification threshold for one type of holding to another. While trying to be helpful and minimise the impact of including stock lending transactions in the DTR notification regime, responses indicate that our original proposal to apply the EU minimum thresholds to stock-lending transactions will create a disproportionate burden on issuers when trying to calculate thresholds. We have concluded that stock lending transactions will need to be treated in the same way as all other holdings and should be notified at the appropriate thresholds set out in the DTRs. As a consequence, we do

not require a specific rule for stock-lending transactions as the existing DTR provisions apply. We will not proceed with the proposal to introduce the new rule DTR 5.1.5R(1)(e), but we will delete DTR 5.1.1R(5) and DTR 5.1.3R(6).

If applicable, we expect all vote holders to recalculate their holdings taking into account stock lending transactions on the date the new rules come into force. The new notification should be made within the timeframes set out in DTR 5.8.3R.

We also note the feedback received in respect of the disclosure of stock-lending transactions leading to additional complexity for DTR filers and lesser rather than enhanced transparency for issuers and the market in trying to understand the relevant content of the notifications. However, stock-lending transactions are within scope of the TD (and, therefore, the DTR notification regime) and we are required to amend our approach to ensure we fully implement the Directive and align with other Member States. Therefore, both lenders and borrowers are required to make notifications of their vote holdings according to the requirements set out in DTR 5.

There are already comprehensive notes accompanying the TR1 form and paragraphs 5.14 and 5.15 of CP15/11 clarify how it should be completed as well as highlighting the relevance of DTR 5.8.11R in this context. However, please note on 22 October 2015 ESMA published a new standard form for the notification of major holdings.¹⁴ At this time, the FCA will continue using the existing TR1 form but proposes implementing the new ESMA standard form in the future. We are currently considering the most practical way of implementing the new form and discontinuing use of the TR1 form, allowing vote holders time to make any necessary adjustments.

Q20: *Do you agree with our proposed deletion of DTR 5.1.5R(1)(d) and our proposed amendment to DTR 5.1.5R(2)(e), which allow all investment managers to make vote holder notifications at the EU minimum thresholds?*

Q21: *Do you agree with our proposal to amend DTR 4.4.8R, DTR 5.11.4R and DTR 6.1.16R to reference the article 23(1) provision in its entirety and to make consequential amendments to DTR 4.4.9G, DTR 5.11.5G and DTR 6.1.17G?*

Q22: *Do you agree with our proposal to delete DTR 5.11.6R, to make the consequential change to DTR 5.1.2R to remove reference to the article 23 exemption and to include new provisions in DTR 5.5.1AR, DTR 5.6.1CR and DTR 5.8.12R(3) to make reference to the third country exemption in the revised DTR 5.11.4R?*

4.6 We did not receive any responses disagreeing with the proposals referred to in Q20 to 22 or any other substantive comments.

¹⁴ www.esma.europa.eu/system/files/esma-2015-1597_standard_form_for_major_holdings.docx

Q23: Do you agree with our analysis of the impact of applying the notification regime to stock lending transactions?

- 4.7** One respondent did not believe that the proposed treatment will remove asymmetric disclosure, nor will the information provided enable investors to acquire or dispose of shares in full knowledge of changes in voting structure.
- 4.8** Another respondent acknowledged the requirement to include stock-lending transactions in the notification regime but remained concerned that this will lead to a significant increase in notifications without benefit.

Q24: Do you have any further comments on the costs of notifying stock lending transactions?

- 4.9** One respondent noted we stated that with the pre-existence of monitoring systems, the costs of making these notifications are expected to be marginal. While they agreed that the introduction of the notification requirements is unlikely to change shareholders' behaviour, and the additional DTR notifications will not generate a material direct cost, the existing monitoring systems and processes underlying DTR creation will need amendment and this cost may not be marginal.

The FCA's response

The introduction of the requirement for both parties to disclose stock-lending transactions on the same basis ensures the UK implements the TD correctly. Harmonising our rules with other Member States will also benefit those shareholders who are subject to notification requirements in multiple jurisdictions. We will proceed with our proposal to apply the notification regime to stock-lending transactions.

Q25: Do you agree with our analysis of the impact of deleting DTR 5.1.5R(1)(d) and amending DTR 5.1.5R(2)(e)?

- 4.10** We did not receive any responses disagreeing with this proposal.

General feedback

- 4.11** One respondent suggested that it would be beneficial to amend the vote holder notification thresholds to reflect the EU minimum thresholds of 5% and 10% and above rather than maintaining the current UK super equivalent thresholds at 3% and 1% thereafter. This suggested amendment would harmonise the rules across the EU.

The FCA's response

While we note this general comment, this is not a proposal we intend to consult on as we will maintain the UK super equivalent thresholds.

5. Future consultation: prescribing a reporting format for the TD reports on payments to governments

- 5.1** One of the amendments made to the TD by the TDAD was the introduction of the requirement for issuers who are active in the extractive or logging of primary forest industries to prepare an annual report on payments made to governments in the countries in which they operate (also referred to as 'reports on payments to governments' or 'country by country reporting'). The Treasury requested that the FCA implement this new requirement early. Following consultation in CP14/17¹⁵, we published policy statement PS15/1¹⁶ and implemented the requirement with the new DTRs taking effect for financial years commencing on or after 1 January 2015.
- 5.2** At that time, with the Treasury's agreement, we did not prescribe a reporting format, and were not required to do so under the TD.
- 5.3** However, the Treasury has now requested that the FCA prescribe a reporting format for the annual reports on payments to governments prepared under the TD by issuers who are active in the extractive or logging of primary forest industries. This request addresses the Government's commitment made in the Open Government Partnership National Action Plan¹⁷ 'NAP2' which stated that, in 2016, 'UK listed and UK registered extractive companies will start to publish data under the EU Directives in an open and accessible format'.
- 5.4** Given the request by Government that it wishes a reporting format to be prescribed we are currently looking at the reporting format which will be used under the Accounting Directive 2013/34/EU (AD) in the UK and assessing the practicalities of proposing the use of the same format for the TD reporting requirements. The intention of which will be to reduce the administration burden for companies who are required to produce a report on payments to governments report under both the AD and the TD. We are working closely with the Treasury, The Department for Business, Innovation & Skills (BIS) and Companies House to develop this consultation.
- 5.5** The TD country by country reporting requirements will apply to all issuers of securities admitted to trading on a regulated market that are active in the extractive or logging of primary forest industries when the TDAD is implemented in full on a pan-EU basis in November 2015. The FCA's proposal to prescribe a reporting format will affect relevant issuers where the UK acts as home Member State and the FCA's DTRs apply. It will also affect listed companies and issuers of securitised derivatives who are required by the FCA's Listing Rules (LR) to comply with DTR 4.

¹⁵ www.fca.org.uk/news/cp14-17

¹⁶ www.fca.org.uk/your-fca/documents/policy-statements/ps15-01

¹⁷ www.gov.uk/government/consultations/open-government-partnership-uk-national-action-plan-2013/open-government-partnership-uk-national-action-plan-2013-to-2015

Annex 1

list of non-confidential respondents

Aosphere LLP (an affiliate of Allen & Overy)

Association of Investment Companies

Blackrock

International Securities Lending Association

The Investment Association

The Law Society and City of London Law Society (Joint Response)

Slater Investments

Virgin Money

Appendix 1

Made rules (legal instrument)

**DISCLOSURE AND TRANSPARENCY RULES SOURCEBOOK (TRANSPARENCY
DIRECTIVE AMENDING DIRECTIVE) INSTRUMENT 2015**

Powers exercised

- A. The Financial Conduct Authority 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 89A (Transparency rules);
 - (3) section 89C (Provision of information by issuers of transferable securities);
 - (4) section 137A (General rule-making power);
 - (5) section 137T (General supplementary powers); and
 - (6) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 26 November 2015.

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 to this instrument listed in column (2).

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

Notes

- E. In Part 2 of 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.

European Union Legislation

- F. Although European Union legislation is reproduced in this instrument, only European Union legislation reproduced in the Official Journal of the European Union is deemed authentic.

Citation

- G. This instrument may be cited as the Disclosure and Transparency Rules Sourcebook (Transparency Directive Amending Directive) Instrument 2015.

By order of the Board
5 November 2015

Annex A

Amendments to the Glossary of definitions

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

Home State

...

- (9) (in *DTR*):
- (a) in the case of an *issuer* of ~~debt~~ debt securities the denomination per unit of which is less than EUR 1 000 or an *issuer* of *shares*:
- (i) where the *issuer* is incorporated in the *EEA*, the *EEA State* in which it has its registered office;
- (ii) where the *issuer* is incorporated in a third country, the *EEA State* ~~referred to in point (iii) of article 2(1)(m) of Directive 2003/71/EC~~ chosen by the *issuer* from among the *EEA States* where its securities are admitted to trading on a *regulated market*; the choice of *Home State* shall remain valid unless the *issuer* has chosen a new *Home State* under (c) and has disclosed the choice in accordance with *DTR* 6.4.2R and *DTR* 6.4.3R.

The definition of *Home State* shall be applicable to ~~debt securities~~ debt securities in a currency other than Euro, provided that the value of such denomination per unit is, at the date of the issue, less than EUR 1 000, unless it is nearly equivalent to EUR 1 000;

- (b) for an *issuer* not covered by (a), the *EEA State* chosen by the *issuer* from among the *EEA States* in which the *issuer* has its registered office, where applicable, and those *EEA States* which have admitted where its securities are admitted to trading on a *regulated market* on their territory. The *issuer* may choose only one *EEA State* as its ~~Home Member State~~ *Home State*. Its choice shall remain valid for at least three years unless its securities are no longer admitted to trading on any *regulated market* in the *EEA* or unless the *issuer* becomes covered by (a) or (c) during the three-year period;
- (c) for an *issuer* whose securities are no longer admitted to trading on a *regulated market* in its *Home State* as

defined by (a)(ii) or (b) but instead are admitted to trading in one or more other EEA States, such new Home State as the issuer may choose from among the EEA States where its securities are admitted to trading on a regulated market and, where applicable, the EEA State where the issuer has its registered office.

In the absence of disclosure by the issuer of its Home State as defined by (a)(ii) or (b) within a period of three months from the date that the issuer's securities are first admitted to trading on a regulated market, the Home State shall be determined in accordance with DTR 6.4.4R.

Host State

...

(1A) (in DTR) an EEA State in which securities are admitted to trading on a regulated market, if different from the Home State.

(2) (except in LR₂ and PR and DTR and except in relation to MiFID)...

...

issuer

...

(2A) ~~(in chapters 1A, 1B, 4, 6 and 7 of DTR) a legal entity governed by private or public law person, including a State, whose securities are admitted to trading on a regulated market, the issuer being, in the case of depository receipts representing securities, the issuer of the securities represented;~~ in the case of depository receipts admitted to trading on a regulated market, the issuer means the issuer of the securities represented by the depository receipt, whether or not those securities are admitted to trading on a regulated market.

(2B) (in chapter 5 of DTR):

(a) ~~a legal entity governed by private or public law person, including a State, whose shares are admitted to trading on a regulated market, the issuer being, in the case of depository receipts representing securities, the issuer of the securities represented;~~ in the case of depository receipts admitted to trading on a regulated market, the issuer means the issuer of the securities represented by the depository receipt, whether or not those securities are admitted to trading on a regulated market; or

...

shareholder

...

- (2) (in relation to chapters 5 ~~[]~~ and 6 of *DTR*) any ~~natural person or legal entity governed by private or public law,~~ *person* who holds directly or indirectly:
- (a) *shares* of the *issuer* in its own name and on its own account;
- (b) *shares* of the *issuer* in its own name, but on behalf of another ~~natural person~~ *person* ~~or legal entity~~;
- (c) depository receipts, in which case the holder of the depository receipt shall be considered as the shareholder of the underlying *shares* represented by the depository receipts.

trading book

...

- (5) (in *DTR*) has the meaning in article 4.1(86) of *EU CRR*.

Transparency Directive

- (1) ~~(except in *DTR* 4.3A, *DTR* 4.4 and *DTR* 6.3.5R(3)(d))~~ the European Parliament and Council Directive on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market or through a comparable mechanism for the disclosure of information under national requirements of a Member State concerning the dissemination of information (No. 2004/109/EC).
- (2) ~~(in *DTR* 4.3A, *DTR* 4.4 and *DTR* 6.3.5R(3)(d))~~ the European Parliament and Council Directive on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market or through a comparable mechanism for the disclosure of information under national requirements of a Member State concerning the dissemination of information (No. 2004/109/EC) as amended by the Directive of the European Parliament and of the Council of 22 October 2013 (No. 2013/50/EU).

Annex B

Amendments to the Listing Rules sourcebook (LR)

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

17 Debt and debt-like securities: Standard listing

...

17.5 Requirements for states, regional and local authorities and public international bodies

...

Compliance with transparency rules

17.5.2 R ...

- (2) An *issuer* referred to in paragraph (1) that is not already required to comply with the *transparency rules* must comply with:

...

- (b) ~~DTR 6.1.2R (amendments to constitution); [deleted]~~

Annex C

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

Part 1

In the table below, the word or phrase in column (1) is replaced in each place where it occurs by the word or phrase in column (2), the occurrence references as indicated in column (3), and number of occurrences for each reference as indicated in column (4). Note that references contained in text to be deleted are not included in the occurrence references indicated in column (3) or in the occurrence count in column (4).

(1)	(2)	(3)	(4)
<i>financial instrument</i>	financial instrument	<i>DTR 5.8.2R(2)</i> <i>DTR 5.8.2R(3)</i>	1 1
<i>financial instruments</i>	financial instruments	<i>DTR 5.1.2R</i> <i>DTR 5.1.2R(1)</i> <i>DTR 5.1.3R(4)(b)</i> <i>DTR 5.1.3R(4)(b)(i)</i> <i>DTR 5.1.3R(4)(b)(iii)</i> <i>DTR 5.2.3G</i> <i>DTR 5.3.1R(1)</i> <i>DTR 5.3.3G(1)</i> <i>DTR 5.3.4R</i> <i>DTR 5.4.5R</i> <i>DTR 5.7.1R(1)</i> <i>DTR 5.7.1R(2)</i> <i>DTR 5.7.1R(3)</i> <i>DTR 5.8.2R(1)</i> <i>DTR 5.8.2R(1)(b)</i> <i>DTR 5.8.11R</i>	1 1 2 1 1 1 1 2 2 1 1 1 1 1 1 1 1

Part 2

In Part 2 of this Annex, underlining indicates new text and striking through indicates deleted text.

[*Editor's note:* The changes made by Part 1 have already been taken into account in the text of the *DTR 5* provisions shown below.]

4 Periodic Financial Reporting

4.1 Annual financial report

...

Publication of annual financial reports

...

- 4.1.4 R An *issuer* must ensure that its annual financial report remains publicly available for at least ~~five~~ ten years.

[**Note:** article 4(1) of the *TD*]

...

4.2 Half-yearly financial reports

...

Publication of half-yearly financial reports

- 4.2.2 R ...

(2) The half-yearly financial report must be made public as soon as possible, but no later than ~~two~~ three months, after the end of the period to which the report relates.

(3) An *issuer* must ensure that the half-yearly financial report remains available to the public for at least ~~five~~ ten years.

[**Note:** article 5(1) of the *TD*]

...

4.4 Exemptions

Public sector issuers

- 4.4.1 R The *rules* on annual financial reports (*DTR* 4.1) and half-yearly financial reports (*DTR* 4.2) do not apply to:

(1) a state;

(2) a regional or local authority of a state;

(3) a public international body of which at least one *EEA State* is a member;

(4) the ~~ECB~~, European Central Bank;

(5) the European Financial Stability Facility (EFSF) established by the EFSF Framework Agreement and any other mechanism established with the objective of preserving the financial stability of European

monetary union by providing temporary financial assistance to the EEA States whose currency is the euro; and

(6) *EEA States'* national central banks.

[Note: article 8(1)(a) of the *TD*]

...

Non-EEA States – Equivalence

4.4.8 R An *issuer* whose registered office is in a *non-EEA State* ~~whose relevant laws are considered equivalent by the *FCA*~~ is exempted from the *rules* on:

- (1) annual financial reports in *DTR* 4.1 (other than *DTR* 4.1.7R(4) which continues to apply);
- (2) half-yearly financial reports (*DTR* 4.2); and
- (3) reports on payment to governments (*DTR* 4.3A);

if the law of the *non-EEA State* in question lays down equivalent requirements or the *issuer* complies with requirements of the law of a *non-EEA State* that the *FCA* considers as equivalent.

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

4.4.9 G The *FCA* maintains a published list of *non-EEA States*, ~~which, for the purpose of article 23.1 of the *TD*, are judged to have~~ whose laws which lay down requirements equivalent to those imposed upon *issuers* by this chapter, or where the requirements of the law of that *non-EEA State* are considered to be equivalent by the *FCA*. Such *issuers* remain subject to the following requirements of *DTR* 6:

...

5 Vote Holder and Issuer Notification Rules

5.1 Notification of the acquisition or disposal of major shareholdings

5.1.1 R In this chapter:

...

- (4) an acquisition or disposal of *shares* is to be regarded as effective when the relevant transaction is executed unless the transaction provides for settlement to be subject to conditions which are beyond the control of the parties in which case the acquisition or disposal is to be regarded as effective on the settlement of the transaction; and
- (5) ~~a stock lending agreement which provides for the outright transfer of~~

~~securities and which provides the lender with a right to call for re-delivery of the lent stock (or its equivalent) is not (as respects the lender) to be taken as involving a disposal of any *shares* which may be the subject of the stock loan; and [deleted]~~

...

- 5.1.2 R ~~Subject to the exemption for certain third country *issuers* (*DTR* 5.11.6R), a~~
A *person* must notify the *issuer* of the percentage of its voting rights he holds as *shareholder* or holds or is deemed to hold through his direct or indirect holding of financial instruments falling within *DTR* 5.3.1R(1); ~~subject to the exemption in *DTR* 5.3.1R(2), and *DTR* 5.3.1R(2A),~~ (or a combination of such holdings) if the percentage of those voting rights:

...

[**Note:** articles 9(1) ~~and~~, 9(2), 13(1) and 13a(1) of the *TD*]

Certain voting rights to be disregarded

- 5.1.3 R Voting rights attaching to the following *shares* are to be disregarded for the purposes of determining whether a person has a notification obligation in accordance with the thresholds in *DTR* 5.1.2R:

- (1) (a) *shares* acquired; or
 (b) *shares* underlying financial instruments within *DTR* 5.3.1R(1) to the extent that such financial instruments are acquired;

for the sole purpose of clearing and settlement within a settlement cycle not exceeding the period beginning with the transaction and ending at the close of the third *trading day* following the day of the execution of the transaction (irrespective of whether the transaction is conducted on-exchange);

- (2) (a) *shares* held; or
 (b) *shares* underlying financial instruments within *DTR* 5.3.1R(1) to the extent that such financial instruments are held;

by a custodian (or nominee) in its custodian (or nominee) capacity (whether operating from an establishment in the UK or elsewhere) provided such a *person* can only exercise the voting rights attached to such *shares* under instructions given in writing or by *electronic means*;

- (3) (a) *shares* held; or
 (b) *shares* underlying financial instruments within *DTR* 5.3.1R(1) to the extent that such financial instruments are

held;

by a *market maker* acting in that capacity subject to the percentage of such *shares* not being equal to or in excess of 10% and subject to the *market maker* satisfying the criteria and complying with the conditions and operating requirements set out in *DTR 5.1.4R*;

(4) ...

(b) *shares* underlying financial instruments within *DTR 5.3.1R(1)* to the extent that such financial instruments are held;

by a *credit institution* or *investment firm* provided that:

(i) ...

...

(iii) ~~the *credit institution*, or *investment firm*, ensures that~~ the voting rights attached to *shares* in, or related to financial instruments in, the *trading book* are not exercised or otherwise used to intervene in the management of the *issuer*.

...

(6) ~~*shares* acquired by a borrower under a stock lending agreement provided:~~

(a) ~~such *shares* (or equivalent stock) are on lent or otherwise disposed of by the borrower by not later than close of business on the next *trading day*; and~~

(b) ~~the borrower does not declare any intention of exercising (and does not exercise) the voting rights attaching to the *shares*. [deleted]~~

(7) *shares* acquired for stabilisation purposes in accordance with the *Buy-back and Stabilisation Regulation*, if the voting rights attached to those *shares* are not exercised or otherwise used to intervene in the management of the *issuer*.

[Note: articles 9(4), 9(5), 9(6), 9(6a), ~~and~~ 10(c) and 13(4) of the *TD*]

5.1.4 R ...

(2) A *market maker* relying upon the exemption for *shares* or financial instruments within *DTR 5.3.1R(1)* held by it in that capacity must notify the *competent authority* of the *Home Member State* of the *issuer*, at the latest within the time limit provided for by *DTR 5.8.3R*, that it conducts or intends to conduct market making activities on a

particular *issuer* (and shall equally make such a notification if it ceases such activity).

[**Note:** article 6(1) of the *TD implementing Directive*]

...

Aggregation of holdings

- 5.1.4A EU Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings provides that:

Recital 2

The thresholds for the market making and trading book exemptions should be calculated by aggregating voting rights relating to shares with voting rights related to financial instruments (that is entitlements to acquire shares and financial instruments considered to be economically equivalent to shares) in order to ensure consistent application of the principle of aggregation of all holdings of financial instruments subject to notification requirements and to prevent a misleading representation of how many financial instruments related to an issuer are held by an entity benefiting from those exemptions.

Article 2

Aggregation of holdings

For the purpose of calculation of the 5% threshold referred to in Article 9(5) and (6) of Directive 2004/109/EC, holdings under Articles 9, 10 and 13 of that Directive shall be aggregated.

Aggregation of holdings in the case of a group

- 5.1.4B EU Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings provides that:

Recital 3

In order to provide an adequate level of transparency in the case of a group of companies, and to take into account the fact that, where a parent undertaking has control over its subsidiaries, it may influence their management, the thresholds should be calculated at group level. Therefore all holdings owned by a parent undertaking of a credit institution or investment firm and subsidiary companies should be disclosed when the total sum of the holdings reaches the notification threshold.

Article 3

Aggregation of holdings in the case of a group

For the purpose of calculation of the 5% threshold referred to in Article 9(5) and (6) of Directive 2004/109/EC in the case of a group of companies, holdings shall be aggregated at group level according to the principle laid down in Article 10(e) of that Directive.

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

- 5.1.5 R (1) The following are to be disregarded for the purposes of determining whether a *person* has a notification obligation in accordance with the thresholds in *DTR 5.1.2R* except at the thresholds of 5% and 10% and above:
- ...
- (c) voting rights attaching to *shares* which may be exercisable by an *ICVC*;
- (d) ~~voting rights attaching to *shares* which may be exercised by a category of investment entity which for this purpose is prescribed by the *FCA*. [deleted]~~
- (2) For the purposes of *DTR 5.1.5R* (1)(a), a *person* ("A") may lawfully manage *investments* belonging to another if:
- ...
- (e) ~~A is a category of investment manager prescribed for this purpose by the *FCA* can lawfully manage those *investments* in a *non-EEA State* and would, if he were to manage those *investments* in the *UK*, require a *Part 4A permission*.~~

5.2 Acquisition or disposal of major proportions of voting rights

...

- 5.2.3 G A *person* falling within Cases (a) to (h) is an indirect holder of *shares* for the purpose of the definition of *shareholder*. These indirect holdings have to be aggregated, but also separately identified in a notification to the *issuer*. Apart from those identified in the Cases (a) to (h), the *FCA* does not expect any other significant category "indirect shareholder" to be identified. Cases (a) to (h) are also relevant in determining whether a *person* is an indirect holder of ~~qualifying~~ financial instruments within *DTR 5.3.1R*(1)(a) which result in an entitlement to acquire *shares*.

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

- 5.3.1 R (1) A *person* must make a notification in accordance with the applicable

thresholds in *DTR 5.1.2R* in respect of any financial instruments which they hold, directly or indirectly, which:

- (a) ~~are qualifying *financial instruments* within *DTR 5.3.2R* on maturity give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to the holder's right to acquire, *shares* to which voting rights are attached, already issued, of an *issuer*; or~~
- (b) ~~unless (2) or (2A) applies: are not included in (a) but which are referenced to *shares* referred to in (a) and with economic effect similar to that of the financial instruments referred to in (a), whether or not they confer a right to a physical settlement.~~
 - (i) ~~are referenced to the *shares* of an *issuer*, other than a non-UK *issuer*; and~~
 - (ii) ~~have similar economic effects to (but which are not) qualifying *financial instruments* within *DTR 5.3.2R*.~~

[Note: article 13(1) of the *TD*]

- (2) ~~Paragraph (1)(b) does not apply to *financial instruments* held by a client-serving intermediary:~~
 - (a) ~~acting in a client serving capacity; and~~
 - (b) ~~satisfying the conditions in (3) and the continuing obligations in (4). [deleted]~~
- (2A) ~~Paragraph (1)(b) does not apply to:~~
 - (a) ~~*financial instruments* being nil-paid rights received from an *issuer* during a *rights issue*, but only if the *person* receiving those instruments does not, during the *rights issue* period, dispose of any of them, or acquire or dispose of a holding in a *financial instrument* within the scope of *DTR 5* relating to the *issuer*; or~~
 - (b) ~~*financial instruments* being rights to apply for *open offer shares*, but only if the *person* receiving the offer:~~
 - (i) ~~chooses to purchase the full amount of *shares* offered to him in that *open offer*; and~~
 - (ii) ~~does not, during the *open offer* period acquire, or dispose of, a holding in a *financial instrument* within the scope of *DTR 5* relating to the *issuer* making the *open offer*. [deleted]~~

- (3) For the purposes of (2) a client serving intermediary is a *person* satisfying the following conditions:
- (a) (i) it is authorised by its *Home State* under *MiFID* or the *CRD*, or, subject to (iii), as a *third country investment firm*, to deal as principal, in a client serving capacity, in *financial instruments* falling within (1)(b), and to carry on any relevant business connected to such dealing; or
 - (ii) (A) it is a *person* which would be an *investment firm* or *credit institution* if it carried on relevant business, and had its head office, in the *EEA*;
 - (B) it is in the same *group* as a *person* in (a)(i); and
 - (C) it has equivalent authorisation from its home state regulator to set that out in (a)(i); and
 - (iii) references to a *third country investment firm* in (i) are limited to relevant business carried on by such *firms* which is subject to regulatory supervision under the laws of an *EEA State*;
 - (b) it has appropriate systems and controls in order to identify, distinguish between and monitor its client serving dealings and interests and its proprietary trading dealing and interests;
 - (c) when acting in a client serving capacity it does not:
 - (i) intervene, nor does it attempt to intervene, in;
 - (ii) exert, nor purport to exert, influence on;

the management of the *issuer* concerned;
 - (d) (i) it has certified in writing to the *FCA* that it considers itself to qualify for client serving intermediary status and that it satisfies the conditions in (a) to (c);
 - (ii) for a *person* falling into (a)(ii)(A) a further certification in writing to the *FCA* of the matters in (d)(i) must have been made in relation to that *person* by the *person* in its *group* falling into (a)(i), and
 - (iii) the certificates in (i) and (ii) must have been:
 - (A) signed by a relevant *person* of at least *director* level; and

(B) ~~made and sent to the FCA in the preceding 12 month period [deleted]~~

- (4) ~~A client-serving intermediary must:~~
- ~~(a) inform the FCA as soon as it becomes aware that it no longer satisfies the conditions in (3); and~~
 - ~~(b) provide the FCA, on request, with information relevant to its status or operation as a client-serving intermediary. [deleted]~~
- (5) ~~For the purposes of (2) and (3), acting in a client-serving capacity means:~~
- ~~(a) fulfilling orders received from clients otherwise than on a proprietary basis;~~
 - ~~(b) responding to a client's requests to trade otherwise than on a proprietary basis; or~~
 - ~~(c) hedging positions arising out of dealings in (a) or (b). [deleted]~~

5.3.1A G ~~If the exemption in DTR 5.3.1R(2A) is not available in relation to any of the nil-paid rights, the person receiving them should aggregate the voting rights attached to the shares to be allotted under any nil-paid rights retained or to the shares offered which he chooses to purchase under the open offer, as the case may be, with all existing holdings in the issuer, in order to calculate whether a new disclosure is required in accordance with relevant thresholds in DTR 5.1.2R. [deleted]~~

5.3.2 R For the purposes of DTR 5.3.1R(1)(a):

- (1) ~~transferable securities and options, futures, swaps, forward rate agreements, and any other derivative contracts, as referred to in Section C of Annex 1 of MiFID, shall be considered to be qualifying financial instruments provided that they result in an entitlement to acquire, on the holder's own initiative alone, under a formal agreement, shares to which voting rights are attached, already issued of an issuer whose shares are admitted to trading on a regulated market or a UK prescribed market; [deleted]~~
- (2) ~~the instrument holder must enjoy, on maturity, either the unconditional right to acquire the underlying shares or the discretion as to his right to acquire such shares or not; [deleted]~~

...

[Note: ~~Article 13(1)~~ article 2(1)(q) of the TD and Article 11(1) of the TD implementing Directive]

5.3.2A G An indicative list of financial instruments that are subject to notification requirements according to article 13(1b) of the TD is published by ESMA.

[Note: article 13(1b) of the TD]

5.3.2B EU Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings provides that:

Recital 8

To decrease the number of meaningless notifications to the market, the trading book exemption should apply to financial instruments held by a natural person or legal entity fulfilling orders received from clients, responding to a client's request to trade otherwise than on a proprietary basis or hedging positions arising out of such dealings.

Article 6

Client-serving transactions

The exemption referred to in Article 9(6) of Directive 2004/109/EC shall apply to financial instruments held by a natural person or legal entity fulfilling orders received from clients, responding to a client's request to trade otherwise than on a proprietary basis, or hedging positions arising out of such dealings.

5.3.2C G The exemption referred to in article 9(6) of Directive 2004/109/EC is set out in DTR 5.1.3R(4).

[Note: article 13(4) of the TD]

5.3.3 G (1) For the purposes of DTR 5.3.1R (1)(a) and to give effect to Directive 2004/109/EC (TD), ~~qualifying~~ financial instruments within DTR 5.3.1R(1)(a) should be taken into account in the context of notifying major holdings, to the extent that such instruments give the holder an unconditional right to acquire the underlying shares or cash on maturity. Consequently, ~~qualifying~~ financial instruments within DTR 5.3.1R(1)(a) should not be considered to include instruments entitling the holder to receive shares depending on the price of the underlying share reaching a certain level at a certain moment in time. Nor should they be considered to cover those instruments that allow the instrument issuer or a third party to give shares or cash to the instrument holder on maturity.

[Note: Recital 13 of the TD implementing Directive]

(2) For the purposes of ~~DTR 5.3.1R(1)(b)~~, in the FCA's view:

(a) ~~a financial instrument has a similar economic effect to a qualifying financial instrument in DTR 5.3.1R(1)(a)~~, if its terms are referenced, in whole or in part, to an issuer's shares

and, generally, the holder of the *financial instrument* has, in effect, a long position on the economic performance of the *shares*, whether the instrument is settled physically in *shares* or in cash. This is because such an instrument may give the holder the potential to gain an economic advantage in acquiring, or gaining access to, the underlying *shares*. For example, that result may occur because of the likelihood that the counterparty will have hedged with the underlying *shares* or with an instrument which may provide access to such *shares*. The holder may then be in a more advantageous position, compared to other market users (i.e. other potential purchasers of the *shares*), to gain access to those *shares*, either directly from the counterparty, or indirectly, for example in the market following sale by the counterparty;

- (b) 'long' derivative *financial instruments* not having a linear, symmetric pay off profile in line with the underlying *share* (that is, instruments not having a 'delta 1' profile, for example cash-settled *options*) should be considered to have an economic effect, in relation to the underlying *shares* represented, similar to that of a qualifying *financial instrument*, only in the proportion which is equal to the delta of the instrument at any particular point in time. So, for an instrument with a delta of 0.5 on a particular day, the instrument will provide a 'similar economic effect' in half of the underlying *shares* represented. This will mean that holders may need to monitor delta changes at the end of each trading day in order to determine whether a disclosure is required;
- (c) a *financial instrument* referenced to a basket or index of *shares* will not have similar economic effects to a qualifying *financial instrument* unless:
 - (i) the *shares* in the basket represent 1% or more of the class in issue or 20% or more of the value of the securities in the basket or index, or both; or
 - (ii) use of the *financial instrument* is connected to the avoidance of notification;
- (d) a *financial instrument* held by a *person* within a *group*, where the following conditions are satisfied, will not be considered to have economic effects similar to a qualifying *financial instrument*:
 - (i) it is held by that *person* solely for tax or accounting reasons relating to the *group* and not for reasons connected to the avoidance of notification; and

- (ii) ~~another person in the group has made, or is, and continues to be, exempt from making, a notification under DTR 5.3.1R in respect of the position represented by that financial instrument. [deleted]~~

5.3.3A R The number of voting rights must be calculated by reference to the full notional amount of shares underlying the financial instrument except where the financial instrument provides exclusively for a cash settlement, in which case the number of voting rights must be calculated on a “delta-adjusted” basis, by multiplying the notional amount of underlying shares by the delta of the financial instrument. For this purpose, the holder must aggregate and notify all financial instruments relating to the same underlying issuer. Only long positions are to be taken into account for the calculation of voting rights. Long positions are not to be netted with short positions relating to the same underlying issuer.

[Note: article 13(1a) of the TD]

5.3.3B EU Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings provides that:

Recital 4

The disclosure regime for financial instruments that have a similar economic effect to shares should be clear. Requirements to provide exhaustive details of the structure of corporate ownership should be proportionate to the need for adequate transparency in major holdings, the administrative burdens those requirements place on holders of voting rights and the flexibility in the composition of a basket of shares or an index. Therefore, financial instruments referenced to a basket of shares or an index should only be aggregated with other holdings in the same issuer when the holding of voting rights through such instruments is significant or the financial instrument is not being used primarily for investment diversification purposes.

Recital 5

It would not be cost-efficient for an investor to build a position in an issuer through holding a financial instrument referenced to different baskets or indices. Therefore, holdings of voting rights through a financial instrument referenced to a series of baskets of shares or indices which are individually under the established thresholds should not be accumulated.

Article 4

Financial instruments referenced to a basket of shares or an index

1. Voting rights referred to in Article 13(1a)(a) of Directive 2004/109/EC in the case of a financial instrument referenced to a basket of shares or an index shall be calculated on the basis of the weight of the share in the basket of shares or index where any of the

following conditions apply:

- (a) the voting rights in a specific issuer held through financial instruments referenced to the basket or index represent 1% or more of voting rights attached to shares of that issuer;
- (b) the shares in the basket or index represent 20% or more of the value of the securities in the basket or index.

2. Where a financial instrument is referenced to a series of baskets of shares or indices, the voting rights held through the individual baskets of shares or indices shall not be accumulated for the purpose of the thresholds set out in paragraph 1.

5.3.3C EU Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings provides that:

Recital 6

Financial instruments which provide exclusively for a cash settlement should be accounted for on a delta-adjusted basis, with cash position having delta 1 in the case of financial instruments having a linear, symmetric pay-off profile in line with the underlying share and using a generally accepted standard pricing model in the case of financial instruments which do not have a linear, symmetric pay-off profile in line with the underlying share.

Recital 7

In order to ensure that information about the total number of voting rights accessible to the investor is as accurate as possible, delta should be calculated daily taking into account the last closing price of the underlying share.

Article 5

Financial instruments providing exclusively for a cash settlement

- 1. The number of voting rights referred to in Article 13(1a)(b) of Directive 2004/109/EC relating to financial instruments which provide exclusively for a cash settlement, with a linear, symmetric pay-off profile with the underlying share shall be calculated on a delta-adjusted basis with cash position being equal to 1.
- 2. The number of voting rights relating to an exclusively cash-settled financial instrument without a linear, symmetric pay-off profile with the underlying share shall be calculated on a delta-adjusted basis, using a generally accepted standard pricing model.
- 3. A generally accepted standard pricing model shall be a model that is

generally used in the finance industry for that financial instrument and that is sufficiently robust to take into account the elements that are relevant to the valuation of the instrument. The elements that are relevant to the valuation shall include at least all of the following:

- (a) interest rate;
- (b) dividend payments;
- (c) time to maturity;
- (d) volatility;
- (e) price of underlying share.

4. When determining delta the holder of the financial instrument shall ensure all of the following:

- (a) that the model used covers the complexity and risk of each financial instrument;
- (b) that the same model is used in a consistent manner for the calculation of the number of voting rights of a given financial instrument.

5. Information technology systems used to carry out the calculation of delta shall ensure consistent, accurate and timely reporting of voting rights.

6. The number of voting rights shall be calculated daily, taking into account the last closing price of the underlying share. The holder of the financial instrument shall notify the issuer when that holder reaches, exceeds or falls below the thresholds provided for in Article 9(1) of Directive 2004/109/EC.

5.3.4 R The holder of ~~qualifying~~ financial instruments within DTR 5.3.1R(1)(a), and, to the extent relevant, financial instruments with similar economic effects within DTR 5.3.1R(1)(b), is required to aggregate and, if necessary, notify all such instruments as relate to the same underlying *issuer*.

[**Note:** article 11(2) of the *TD implementing Directive* in respect of qualifying financial instruments 13(1) of the *TD*]

5.3.5 R A person making a notification in accordance with DTR 5.1.2R must, if their holding includes financial instruments within DTR 5.3.1R(1):

- (1) include a breakdown by type of financial instruments held in accordance with DTR 5.3.1R(1)(a) and financial instruments held in accordance with DTR 5.3.1R(1)(b); and
- (2) distinguish between the financial instruments which confer a right to:

(a) physical settlement; and

(b) cash settlement.

[Note: article 13(1) of the TD]

5.4 Aggregation of managed holdings

...

5.4.5 R Where the *parent undertaking* intends to benefit from the exemptions only in relation to the financial instruments referred to in Article 13 of the *TD*, it shall ~~(in relation to *financial instruments* giving an entitlement to acquire *shares* which are admitted to trading on a *regulated market*)~~ must notify to the *FCA* only the list referred to in paragraph (1) of *DTR* 5.4.4R.

[Note: article 10(3) of the TD implementing Directive]

...

5.5 Acquisition or disposal by issuer of shares

...

5.5.1A R *DTR* 5.5.1R does not apply to a third-country *issuer* that falls within *DTR* 5.11.4R.

...

5.6 Disclosure by issuers

...

5.6.1C R *DTR* 5.6.1R does not apply to a third-country *issuer* that falls within *DTR* 5.11.4R.

...

5.7 Notification of combined holdings

5.7.1 R A *person* making a notification in accordance with *DTR* 5.1.2R must do so by reference to each of the following:

(1) the aggregate of all voting rights which the *person* holds as *shareholder* and as the direct or indirect holder of ~~qualifying~~ financial instruments falling within *DTR* 5.3.1R(1) and *financial instruments* with similar economic effects;

(2) the aggregate of all voting rights held as direct or indirect *shareholder* (disregarding for this purpose holdings of financial

instruments); and

- (3) the aggregate of all voting rights held as a result of direct and indirect holdings of qualifying financial instruments falling within DTR 5.3.1R(1). ~~and~~

[Note: article 13a(1) of the TD]

- (4) ~~the aggregate of all voting rights deemed to be held as a result of direct and indirect holdings of financial instruments having similar economic effects to (but not including) qualifying financial instruments in (3).~~ [deleted]

5.7.1A R Voting rights relating to financial instruments within DTR 5.3.1R(1) that have already been notified in accordance with DTR 5.1.2R must be notified again when the person has acquired the underlying shares and such acquisition results in the total number of voting rights attached to shares issued by the same issuer reaching or exceeding the thresholds laid down by DTR 5.1.2R.

[Note: article 13a(2) of the TD]

5.7.2 G The effect of DTR 5.7.1R is that a person may have to make a notification if the overall percentage level of his voting rights remains the same but there is a notifiable change in the percentage level of one or more of the categories of voting rights held.

5.8 Procedures for the notification and disclosure of major holdings

...

5.8.2 R ...

- (4) ~~For financial instruments having similar economic effects to (but which are not) qualifying financial instruments within DTR 5.3.2R, a person making a notification in (1) must do so on a delta adjusted basis, that is, in relation to the underlying shares referenced, only in the proportion which is equal to the delta of the instrument at any particular point in time.~~ [deleted]

...

5.8.3 R The notification to the issuer shall be effected as soon as possible, but not later than four *trading days* in the case of a ~~non-~~ non-UK issuer and two *trading days* in all other cases, ~~the first of which shall be the day after the date on which the relevant person:~~

...

...

5.8.12 R ...

(3) *DTR 5.8.12R(2)* does not apply to a third country issuer that falls within *DTR 5.11.4R*.

[**Note:** article 12(6) of the *TD*]

...

5.11 Non EEA State issuers

...

5.11.4 R An issuer whose registered office is in a *non-EEA State* whose relevant laws are considered equivalent by the *FCA* is exempted from the corresponding obligation in this chapter *DTR 5.5.1R*, *DTR 5.6.1R* and *DTR 5.8.12R(2)* if:

(1) the law of the *non-EEA State* in question lays down equivalent requirements; or

(2) the issuer complies with requirements of the law of a *non-EEA State* that the *FCA* considers as equivalent.

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

5.11.5 G The *FCA* maintains a published list of *non-EEA States* which, for the purpose of article 23.1 of the *TD*, ~~are judged to have~~ whose laws which lay down requirements equivalent to those imposed upon issuers by this chapter, or where the requirements of the law of that *non-EEA State* are considered to be equivalent by the *FCA*. Such issuers remain subject to the following requirements of *DTR 6*:

...

5.11.6 R ~~The notification requirements in *DTR 5.1.2R* do not apply to a person in respect of the shares of an issuer which has its registered office in a *non-EEA State* whose laws have been considered equivalent for the purposes of article 23 of the *TD*. [deleted]~~

6 Continuing obligations and access to information

...

6.1 Information requirements for issuers of shares and debt securities

...

Amendments to constitution

6.1.2 R (1) ~~If an issuer of transferable securities proposes to amend its~~

~~constitution it must communicate the draft amendment to:~~

- ~~(a) the FCA; and~~
 - ~~(b) the regulated market on which its securities have been admitted to trading.~~
- ~~(2) The communication referred to in paragraph (1) must be effected without delay but at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment.~~
- ~~[Note: article 19(1) of the TD] [deleted]~~

...

Information about changes in rights attaching to securities

...

- 6.1.11 R ~~An issuer of securities admitted to trading on a regulated market (other than an issuer which is a public international body of which at least one EEA State is a member) must disclose to the public without delay any new loan issues and in particular any guarantee or security in respect of such issues.~~
- ~~[Note: article 16(3) of the TD] [deleted]~~

...

Non-EEA State exemption

- 6.1.16 R An issuer whose registered office is in a non-EEA State ~~whose relevant laws are considered equivalent by the FCA~~ is exempted from DTR 6.1.3R to DTR 6.1.15R if:
- (1) the law of the non-EEA State in question lays down equivalent requirements; or
 - (2) the issuer complies with requirements of the law of a non-EEA State that the FCA considers as equivalent.

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

- 6.1.17 G The FCA maintains a published list of ~~non-EEA State which,~~ non-EEA States, for the purpose of article 23.1 of the TD, ~~are judged to have whose~~ laws ~~which~~ lay down requirements equivalent to those imposed upon issuers by this chapter, or where the requirements of the law of that non-EEA State are considered to be equivalent by the FCA. Such issuers remain subject to the following requirements of DTR 6:

...

...

6.4 ~~Choice Disclosure of Home State and notifications by third country issuers~~

Application

- 6.4.1 R In respect of *transferable securities* which are *admitted to trading* on a *regulated market*, this section applies to:
- (1) an *issuer* whose *Home State* is the *United Kingdom* in accordance with the first indent of article 2.1(i)(i) of the TD; and
 - (2) an *issuer* who chooses the *United Kingdom* as its *Home State* in accordance with ~~article 2.1(i)(ii) of the TD~~;
 - (a) the second indent of article 2.1(i)(i) of the TD; or
 - (b) article 2.1(i)(ii) of the TD; or
 - (c) article 2.1(i)(iii) of the TD.

~~Choice Disclosure of Home State~~

- 6.4.2 R ~~An issuer that chooses the *United Kingdom* as its *Home State*, pursuant to article 2.1(i)(ii), must disclose that ~~choice~~ its *Home State* is the *United Kingdom* in accordance with DTR 6.2 and DTR 6.3.~~

~~[Note: article 2.1(i) of the TD implementing Directive]~~

- 6.4.3 R An issuer must disclose its *Home State* to the competent authority of:
- (1) where applicable, the *EEA State* where it has its registered office;
 - (2) the *Home State*; and
 - (3) each *Host State*.

~~[Note: article 2.1(i) of the TD]~~

- 6.4.4 R Where an *issuer* has not disclosed its *Home State* as defined by the second indent of article 2.1(i)(i) of the TD or article 2.1(i)(ii) of the TD in accordance with DTR 6.4.2R and DTR 6.4.3R within a period of three months from the date the *issuer's* securities are first admitted to trading on a *regulated market*, the *Home State* shall be:

- (1) the *EEA State* where the *issuer's* securities are admitted to trading on a *regulated market*; or
- (2) where the *issuer's* securities are admitted to trading on *regulated markets* situated or operating within more than one *EEA State*, those *EEA States* shall be the *issuer's Home State* until a subsequent choice of a single *Home State* has been made and disclosed by the *issuer* in accordance with DTR 6.4.2R and DTR 6.4.3R.

~~[Note: article 2.1(i) of the TD]~~

TP 1 Disclosure and transparency rules

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
...					
26	<u>DTR 6.4.2R, DTR 6.4.3R and DTR 6.4.4R</u>	<u>R</u>	<p><u>For an issuer whose securities are already admitted to trading on a regulated market and whose choice of Home State as referred to in the second indent of article 2.1(i)(i) of the TD or in article 2.1(i)(ii) of the TD has not been disclosed prior to 27 November 2015, the period of three months will start on 27 November 2015.</u></p> <p><u>An issuer that has made a choice of Home State as referred to in the second indent of article 2.1(i)(i) of the TD, or in article 2.1(i)(ii) or article 2.1(i)(iii) of the TD and has communicated that choice to the competent authorities of the Home State prior to 27 November 2015 is exempted from the requirements under DTR 6.4.2R and DTR 6.4.3R, unless such an issuer chooses another Home State after 27 November 2015.</u></p>	<u>From 26 November 2015</u>	<u>26 November 2015</u>

Financial Conduct Authority



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25 The North Colonnade Canary Wharf
London E14 5HS
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk
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