

# Primary Market Technical Note

## Issuer's Obligations

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA.

### Rules

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DTR 5.5; DTR 5.6.1R; DTR 5.6.1AR; DTR 5.8.12R

### Acquisition or disposal by the issuer of its own shares

If a share issuer acquires or disposes of its own shares, it must make the percentage of voting rights attributable to those shares it holds public, where the percentage reaches, exceeds or falls below 5% or 10% of voting rights (DTR 5.5.1R).

In relation to the purchase of own shares (acquisitions), there are two possibilities: shares purchased and then held in treasury; or shares purchased and then subsequently cancelled. We describe the different disclosure obligations below.

### Shares held in treasury

There will be notifiable transactions if the re-purchased shares are held in treasury and if this results in the percentage of voting rights held reaching, exceeding, or falling below the thresholds of 5% or 10% of total voting rights. The 5% and 10% thresholds are related to the total

number of treasury shares held and not whether the transaction itself is greater than 5% or 10% of total voting rights.

### **Monthly disclosure of shares held in treasury**

Separate from the requirement to notify under DTR 5.5.1R (acquiring and disposing of own shares), if there has been an increase or decrease of treasury shares, issuers are also required to disclose the total number of shares held in treasury at the end of that calendar month (see DTR 5.6.1R (2)).

### **Cancelled shares**

When an issuer purchases its own shares and cancels them, there is no disclosure obligation. An issuer may have a buy-back programme, where it purchases its own shares and cancels them. However, this does not necessarily result in notifiable transactions, at least for the purposes of DTR 5.5.1R.

Accordingly, if an issuer makes a series of purchases over a period of time, none of them may be notifiable under DTR 5.5 unless the cancellation has the (indirect) effect of altering the proportion of shares held in treasury such that the proportion reaches, exceeds, or falls below the 5% and 10% thresholds.

### **Other obligations**

A purchase of shares by an issuer that has a listing of equity shares in the equity shares (commercial companies) category or the closed-ended investment funds category may result in a disclosure obligation under UKLR 9.6R.

### **Disclosure required by the issuer**

#### **Total number of voting rights**

Voting rights must be calculated on the basis of all the shares to which voting rights are attached, even if exercising these rights is suspended. The number of voting rights to be considered when calculating the percentage of voting rights should be based on the issuer's most recent month-end disclosure, disregarding any treasury shares the issuer holds. The net direct or indirect holding in shares (or financial instruments) considered should be by reference to a point in time up to midnight of the day of the determination (i.e. the date of change in number of voting rights).

An issuer is required (under DTR 5.6.1R) to disclose the total number of voting rights and capital for each class of shares which it issues at the end of each month in which there has been a change. We are aware of a potential inconsistency between the timeliness of the denominator notification required under DTR 5.6.1R and that required by the City Code on Takeovers and Mergers (the City Code), which requires updating on a daily compared to a monthly basis. We cannot resolve this inconsistency without making this part of the DTR significantly more burdensome than the requirements of the Transparency Directive and Companies Act 2006. Issuers (including those covered by the City Code rule) must apply DTR 5.6.1R in addition to any other applicable requirements.

## Notification deadlines

### UK issuers on regulated markets

Ongoing provisions: This table outlines the ongoing disclosure provisions for issuers.

Disclosure requirements	Deadline	Details
Total voting rights	As soon as possible for any relevant change, and no later than the end of the following business day; also, at the end of every calendar month	Disclose any changes in total number of voting rights and capital in respect of each class of share (in accordance with DTR 5.6.1R and 5.6.1AR)
Transactions in own shares	Within four trading days after transaction	Disclose transaction in own shares (i.e. if a holding reaches, exceeds, or falls below a 5% and 10% threshold of voting rights concerned (DTR 5.5.1R)
Notifications from shareholders	By the end of the next trading day	Disclose any information notified to it by shareholders (in accordance with DTR 5.8.12R)
Changes to terms in voting rights	With immediate effect	Disclose any changes in rights attached to various classes of shares

## UK issuers on prescribed markets

Ongoing provisions: This table outlines the ongoing disclosure provisions for issuers.

Disclosure requirements	Deadlines	Details
Total voting rights	As soon as possible for any relevant change, and no later than the end of the following business day; also, at the end of every calendar month	Disclose any changes in total number of voting rights and capital in respect of each class of share (in accordance with DTR 5.6.1R and 5.6.1AR)
Transactions in own shares	Within four trading days after transaction	Disclose transaction in own shares (i.e. if a holding reaches, exceeds or falls below a 5% and 10% threshold of voting rights concerned (DTR 5.5.1R)
Notification from shareholders	By three trading days	Disclose any information notified to it by shareholders (in accordance with DTR 5.8.12R)
Changes to terms in voting rights	With immediate effect	Disclose any changes in rights attached to various classes of shares

Note the differing deadlines for UK issuers on prescribed markets and regulated markets in relation to 'notifications from shareholders'.

## Non-EEA issuers on regulated markets

We will maintain a list of non-EEA States that have laws judged to be equivalent to those imposed by DTR 5. Issuers from non-EEA States are subject to the TD minimum requirements, unless we deem the domestic regime to be equivalent to the TD or if the issuer complies with the requirements of the law of a non-EEA State that we consider equivalent.

<b>Disclosure requirements</b>	<b>Deadline</b>	<b>Details</b>
Notifications from shareholders	Within three trading days	Disclose any information notified to it by shareholders (in accordance with DTR 5.8.12R)
Total voting rights	As soon as possible for any relevant change, and no later than the end of the following business day; also, at the end of every calendar month	Disclose any changes in total number of voting rights and capital in respect of each class of share (in accordance with DTR 5.6.1R and 5.6.1AR)

### Non-EEA issuers on prescribed markets

These issuers have no disclosure obligations.

### Examples

We have set out examples clarifying which denominator to use in calculating the percentage of voting rights attributable to those shares, in the case of acquiring or disposing of own shares. The denominator that should be used should exclude treasury shares. This is because when a company acquires treasury shares it must not exercise the votes attached to those treasury shares.

The denominator used for calculating the acquisition or disposal of own shares, or any other notifiable interest (by a shareholder), is the denominator that should have been disclosed by the issuer under DTR 5.6.1R (an issuer must, at the end of each calendar month during which an increase or decrease has occurred, disclose the total number for voting right and capital for each class of share).

### Example A

Company XYZ purchases own shares

Number of issued shares	Event	Disclosure & relevant calculations
105,000 ordinary shares	Company XYZ purchases 6,000 shares and holds them in treasury (there are no other shares held in treasury)	<p>A) Must disclose an acquisition of own shares. The percentage is 5.7% <math>(6000/105,000) \times 100</math></p> <p>B) At the end of the calendar month, it must disclose the number of shares held in treasury (6,000) and, at this point, the denominator changes (from 105,000 to 99,000)</p>

### Example B

Company PQR disposes of own shares (shares held in treasury)

Number of issued shares	Event	Disclosure & relevant calculations
105,000 ordinary shares of which 6,000 are held in treasury	Company PQR uses 3,000 treasury shares for an employee share scheme; these shares are no longer treasury shares	<p>A) The company will use 99,000 as the denominator to determine the percentage of treasury shares it holds Disposal of own shares <math>(3000/99,000) \times 100 = 3\%</math></p> <p>B) At the end of the calendar month, it must disclose the change in share capital (i.e. 102,000)</p>