Financial Conduct Authority

Please note: a revised version of this Technical Note is being consulted on here to reflect amendments made to the DTRs to implement the Transparency Directive Amending Directive 2013/50/EU which come into force on 26 November 2015

UKLA Technical Note

Voting rights that are disregarded for notification purposes

Ref: UKLA / TN / 546.1

DTR 5.1.3R; DTR 5.1.4R; DTR 5.1.5R

DTR 5.1.5R allows certain voting rights to be disregarded for notifi ation purposes below the 5% and 10% thresholds. Outlined below are our views on some of the applicable provisions.

Non-EEA investment managers

The rules (DTR 5.1.5R (1)(d) and DTR 5.1.5R (2)(e)) give us the power to determine that non-EEA investment entities and managers should be subject to the same sub 5% and 10% notifi ation obligations as EEA firms.

We consider that equal treatment of non-EEA investment managers and entities should be conditional on the entities and managers concerned being subject to appropriate regulation in the country in question and there being no other reasons for not extending the concession, e.g. lack of reciprocity in the treatment of EEA investment managers.

A list of managers and entities that meet these conditions is published on our website together with a reference to the relevant DTR provisions.

US investment managers

Based on our examination of the general regulation and major shareholding disclosure obligations of investment managers in the US, we consider that 'investment advisors' regulated under the Investment Advisors Act 1940 to be subject to equivalent regulation. These will therefore be treated in the same way as EEA investment managers.

Managers of lawfully managed investments, assets of a collective undertaking and open-ended investment companies

Managers are only required to disclose holdings at 5% or above (as opposed to 3%) of the issuer's total voting rights and capital in issue. They must also notify if their holdings reach, exceed, or fall below 10%. When their holdings reach 10%, the exemption no longer applies. Disclosures are required for every 1% increase or decrease above this threshold.

Disclosure obligations where a fund manager has been appointed on a discretionary basis

We clarify the disclosure obligations where, for example, a pension fund appoints a fund manager to act on a discretionary basis. Following the appointment, the benefi ial owner (the pension fund trustee) ceases to have a separate notifiable interest and the fund manager acting as an indirect holder of shares (as per DTR5.2.1R (h)) should make a notifi ation if there are changes in the holdings of shares. Even if the client has retained power to give the fund manager instructions in respect of its assets, the client does not have a separate notifiable interest unless and until it exercises that power. The fund manager will only need to disclose when holdings breach 5% and 10% (DTR 5.1.5R).

Stock lenders and borrowing intermediaries

The lending or borrowing of notifiable interests may not constitute a disposal or acquisition of the voting rights so no notifi ation is necessary. For a stock lender acting under a standard stock lending agreement, a loan of shares will not amount to a disposal. The shares acquired by the borrower should be on-lent or otherwise disposed of by no later than the close of business on the next trading day. The borrower should also not declare any intention to exercise (and not exercise) the voting rights attached to the shares.

Clearing and settlement houses

Shareholders acquiring shares for the sole purpose of clearing or settlement within the T+3 settlement cycle do not need to disclose the change in holdings.

Custodians or nominees of holdings

Custodians or nominees who can only exercise the voting rights attached to shares held in that capacity under instructions given to them in writing or by electronic means do not have to disclose.

Market makers

Market makers (as defined in DTR 5.1.4R) are exempt from disclosing holdings which remain below 10% of the issuer's total voting rights and capital in issue. This exemption falls away if they reach or exceed the 10% threshold. Market makers must disclose their total holdings if they change to reach or exceed 10%, or reach, exceed or fall below every 1% above 10%, of the issuer's total voting rights and capital in issue.

Regarding the definition of market makers, DTR 5.1.3R (3) provides an exemption from notifi ation of holdings up to 10% for market makers acting in their capacity as market makers. Market makers are broadly defined by the Transparency Directive (TD) (via cross-reference to Markets in Financial Instruments Directive(MiFID)) as 'a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital at prices defined by him'.

As stated in PS06/11, we believe the definition includes a market maker acting in that capacity when acting to provide quotes Over-The-Counter. This is because the term 'financial markets' in the definition should not or need not be construed narrowly only to mean a regulated market or multilateral trading facility (MTF). We continue to hold this view.

On this basis a 'Retail Service Provider' offering quotes in SETS stocks (not through or on an LSE trading system) can be a 'market maker' for DTR5 purposes, provided it does so by showing itself as willing buy and sell SETs stocks at prices determined by it.

We further consider the definition of market makers to include 'SETS Principals' as these are market makers on SETS or other systems that are not pure order-driven systems. In contrast, principal traders on a pure order-driven system (like SETS) would not be market makers for DTR5 purposes.

Credit institutions or investment firms

Provided that shares held by credit institutions or investment firms are held on the trading book and their voting rights are not exercised or used to intervene in the management of the issuer, the holdings do not need to be disclosed below 5% of the issuer's total voting rights and capital. At the 5% threshold the exemption of disclosure falls away and credit institutions and investment firms must disclose their total holdings if they change to reach, exceed or fall below every 1% above 5% of the issuer's total voting rights and capital in issue.

Collateral takers

Provided a collateral taker does not declare any intention to or actually exercise the voting rights attached to shares under a collateral transaction (which involves the outright transfer of securities) they are exempt from major shareholding notifi ation requirements.