

Removing the Transparency Directive's requirement to publish interim management statements

July 2014



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We are asking for comments on this Consultation Paper by 4 September 2014.

You can send them to us using the form on our website at: www.fca.org.uk/your-fca/documents/consultation-papers/cp14-12-response-form.

Or in writing to:

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We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

You can download this Consultation Paper from our website: www.fca.org.uk. Or contact our order line for paper copies: 0845 608 2372.

Abbreviations used in this paper

BIS	Department for Business, Innovation & Skills
DTR	Disclosure Rules and Transparency Rules
EC	European Commission
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
LR	Listing Rules
TD	Transparency Directive (2004/109/EC)
TDAD	Transparency Directive Amending Directive (2013/50/EU)
the Treasury	HM Treasury

1. Overview

Introduction

- 1.1** We are consulting on removing the requirement for issuers of shares admitted to trading on a regulated market to publish interim management statements.

What is the background to this?

- 1.2** The Transparency Directive (TD) required issuers of shares admitted to trading on a regulated market to publish interim management statements during the first six months of the financial year and again during the second six month period. The TD was amended by the Transparency Directive Amending Directive (the TDAD) which removes this requirement, although issuers may continue to publish this information if they so choose.
- 1.3** The TDAD came into force on 26 November 2013 and each Member State is required to implement the Directive within 24 months of that date. However, the Treasury has asked us to remove the requirement to publish interim management statements early to lessen the administrative burden for issuers and this Consultation Paper sets out that proposal.

Who does this consultation affect?

- 1.4** This Consultation Paper will be of interest to:
- issuers of shares admitted to trading on a regulated market where the UK acts as home Member State and the FCA's Disclosure Rules and Transparency Rules ("DTR"s) apply;
 - firms advising issuers;
 - firms or persons investing or dealing in securities; and
 - primary information providers.

Is this of interest to consumers?

- 1.5** This Consultation Paper will be of interest to consumers who deal and invest in securities either directly or indirectly through institutions, and also those investors who currently receive interim management statements or quarterly financial reports.

Context

- 1.6** The TDAD's removal of the requirement to publish interim management statements will apply to all issuers of shares admitted to trading on a regulated market when the TDAD is implemented in full on a pan-EU basis in November 2015. The FCA's proposal to implement this provision early will only affect issuers of shares admitted to trading on a regulated market where the UK acts as home Member State and the FCA's Disclosure Rules and Transparency Rules (DTRs) apply.

Summary of our proposals

- 1.7** Reflecting the changes in the TDAD in relation to interim management statements, we propose to remove DTR4.3 in its entirety. We also propose to remove DTR4.4.6R and DTR6.3.5R(3)(c), each becoming obsolete as a result of removing the requirement to publish interim management statements and to amend the Glossary definition of the Transparency Directive.
- 1.8** These changes have a consequential effect on DTR 4.4.1R, 4.4.2R, 4.4.5R, 4.4.7R and 4.4.8R as each of these rules refer to interim management statements. We propose to amend these rules to remove those references.
- 1.9** We also propose consequential amendments to DTR8 Annex 2, DTR TP 1 (19) and LR17.3.6G, all of which make reference to interim management statements.
- 1.10** This Consultation Paper has a six week period to provide feedback on these proposals.

Next steps

- 1.11** We want to know what you think of our proposals. Please send us your comments by 4 September 2014 in writing or using the online response form on our website.
- 1.12** We intend to publish our feedback later in the year.

2. Removing the requirement to publish interim management statements

Introduction

- 2.1** In May 2010, the European Commission (the EC) published a report on the operation of the Transparency Directive and called for views on ways to improve the regime. During this review, the EC stated that 'the obligations to publish interim management statements or quarterly financial reports represent an important burden for many small and medium-sized issuers whose securities are admitted to trading on regulated markets without being necessary for investor protection'. As a result, the TDAD revised Article 6 of the TD and the requirement to publish interim management statements was removed.
- 2.2** The reduction in administrative burdens for issuers has been welcomed by BIS who subsequently made a commitment to the Select Committee on the Kay Review¹ stating 'the Government is committed to removing mandatory quarterly reporting for UK companies and, following publication of the new Directive in the official journal, intends to implement the relevant sections of the revised Directive in the UK as soon as is practical'. This recommendation also sought to address a widely held concern that rigid quarterly reporting requirements can promote an excessive focus on short-term results by company management and investors. The proposals outlined in this paper are intended to support the commitment of the Government.
- 2.3** Before it was amended by the TDAD, Article 6 of the TD required issuers of shares admitted to trading on a regulated market to publish interim management statements during the first six months of the financial year and again during the second six month period. This requirement was implemented in the UK through Chapter 4 of the Disclosure Rules and Transparency Rules with DTR4.3 setting out the timing and content requirements for interim management statements. In particular, DTR4.3.5R specifies that an interim management statement must provide:
1. an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the issuer and its controlled undertakings, and
 2. a general description of the financial position and performance of the issuer and its controlled undertakings during the relevant period.

¹ On the 23rd July 2012, the Department for Business Innovation and Skills published John Kay's final report on UK Equity Markets and Long-Term Decision Making. The Review asked how well equity markets are achieving their core purposes: to enhance the performance of UK companies and to enable savers to benefit from the activity of these businesses through returns to direct and indirect owners of shares in UK companies..

- 2.4** DTR4.3.6R provides that an issuer which publishes quarterly financial reports in accordance with national legislation or the rules of the regulated market, or of its own initiative, will be taken as satisfying the requirement to publish interim management statements in DTR4.3.2R.
- 2.5** To support the Government's commitment, we intend to remove the requirement to publish interim management statements in Autumn 2014, one year ahead of full TDAD implementation. However, issuers may continue to publish such statements (or quarterly financial reports) after that date if they so choose.
- 2.6** Removing this requirement will result in changes to the FCA Handbook, with the proposal to remove DTR 4.3 in its entirety. We also propose to remove DTR4.4.6R and DTR6.3.5R(3)(c), each becoming obsolete as a result of removing the requirement to publish interim management statements. We also propose to amend the Glossary definition of Transparency Directive.

Q1: Do you agree with the proposal to remove DTR4.3, DTR4.4.6R and DTR6.3.5R (3)(c) and amend the Glossary?

- 2.7** These changes have a consequential effect on DTR4.4.1R, 4.4.2R, 4.4.5R, 4.4.7R and 4.4.8R, as each of these rules refer to interim management statements. We propose to amend these rules to remove those references.

Q2: Do you agree with the proposal to amend DTR4.4.1R, 4.4.2R, 4.4.5R, 4.4.7R and 4.4.8R to remove references to interim management statements?

- 2.8** We also propose consequential amendments to DTR8 Annex 2 and DTR TP 1 (19) and also to LR17.3.6G, all of which make reference to interim management statements.

Q3: Do you agree with the proposal to amend DTR8 Annex 2, DTR TP 1(19) and LR17.3.6G to remove references to interim management statements?

Annex 1

Cost benefit analysis

1. We do not anticipate these proposals having any significant cost implications. Removing the requirement to publish interim management statements will reduce costs for relevant issuers and benefit smaller companies.
2. Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis of the implications of the proposed amendments. However, under section 138L(3) this requirement does not apply if there will be no increase in costs or the increase will be of minimal significance. Therefore, no we have not carried out a detailed cost benefit analysis.

Q4: Do you agree with our analysis that the removal of the requirement to publish interim management statements will not have significant costs for issuers?

Annex 2

Compatibility statement

Compatibility with the FCA's general duties

1. This Annex follows the requirements set out in section 138I of the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I FSMA to include an explanation of why it believes making the proposed rules is compatible with its strategic objective, advances one or more of its operational objectives, and has regard to the regulatory principles in section 3B FSMA. The FCA is also required by section 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also includes our assessment of the equality and diversity implications of these proposals.

The FCA's objectives and regulatory principles

1. The proposals set out in this Consultation Paper are compatible with the FCA's strategic objective of ensuring that the relevant markets function well and are primarily intended to advance our operational objectives of:
 - Enhancing market integrity – protecting and enhancing the integrity of the UK financial system by ensuring that the Disclosure Rules and Transparency Rules remain proportionate and effective.
 - Delivering consumer protection – maintaining and securing an appropriate degree of protection for consumers, by ensuring that an appropriate level of information continues to be made available to investors in listed securities in the annual financial report.'
2. In preparing the proposals set out in this Consultation Paper, the FCA has had regard to the regulatory principles set out in section 3B FSMA.

Expected effect on mutual societies

4. Section 138K of FSMA requires us to state whether in our opinion our proposed rules have a significantly different impact on authorised persons who are mutual societies, in comparison with other authorised persons. The relevant Disclosure Rules and Transparency Rules that we propose to delete or amend apply equally to issuers of shares admitted to trading on a regulated market where the UK acts as home Member State regardless of whether they are an authorised person which is a mutual society or another authorised person.

-
5. We therefore believe that the impact of our proposals would not significantly differ depending on whether an issuer with shares admitted to trading on a regulated market where the UK acts as home Member State is:
- an authorised person which is a mutual society; or
 - another authorised person.

Equality and diversity

6. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered. Our equality impact assessment suggests that our proposals do not result in direct discrimination for any of the groups with protected characteristics i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender, nor do we believe that our proposals should give to rise to indirect discrimination against any of these groups. We would nevertheless welcome any comments respondents may have on any equality issues they believe may arise.

Annex 3

List of questions

- Q1:** Do you agree with the proposal to remove DTR4.3, DTR4.4.6R and DTR6.3.5R (3)(c) and amend the Glossary?
- Q2:** Do you agree with the proposal to amend DTR4.4.1R, 4.4.2R, 4.4.5R, 4.4.7R and 4.4.8R to remove references to interim management statements?
- Q3:** Do you agree with the proposal to amend DTR8 Annex 2, DTR TP 1(19) and LR17.3.6G to remove references to interim management statements?
- Q4:** Do you agree with our analysis that the removal of the requirement to publish interim management statements will not have significant costs for issuers?

Appendix 1

Draft Handbook text

DISCLOSURE AND TRANSPARENCY RULES (INTERIM MANAGEMENT STATEMENTS) INSTRUMENT 2014

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 [*date*] 2014.

Amendments to the FCA Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Disclosure and Transparency Rules sourcebook (DTR) is amended in accordance with Annex B to this instrument.
- F. The Listing Rules sourcebook (LR) is amended in accordance with Annex C to this instrument.

Notes

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

Citation

- H. This instrument may be cited as the Disclosure and Transparency Rules (Interim Management Statements) Instrument 2014.

By order of the Board of the Financial Conduct Authority
[*date*]

Annex A**Amendments to the Glossary of definitions**

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

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

TD *Transparency Directive.*

Amend the following definition as shown.

- Transparency Directive* (1) (except in *DTR* 4.4 and *DTR* 6.3.5R) 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* 4.4 and *DTR* 6.3.5R) 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 Disclosure and Transparency Rules sourcebook (DTR)

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

4.3 Interim management statements

Application

- 4.3.1 R Subject to the exemptions set out in *DTR 4.4 (Exemptions)* this section applies to an *issuer*:
- (1) ~~whose shares are admitted to trading;~~ and
 - (2) ~~whose Home State is the United Kingdom.~~ [deleted]

Publication of interim management statements

- 4.3.2 R ~~An issuer must make public a statement by its management during the first six-month period of the financial year and another statement by its management during the second six-month period of the financial year.~~
~~[Note: article 6(1) of the TD]~~ [deleted]
- 4.3.3 R ~~The statement required by *DTR 4.3.2 R* must be made in a period between ten weeks after the beginning, and six weeks before, the end of the relevant six-month period.~~
~~[Note: article 6(1) of the TD]~~ [deleted]

Content of interim management statements

- 4.3.4 R ~~The interim management statement must contain information that covers the period between the beginning of the relevant six-month period and the date of publication of the statement.~~
~~[Note: article 6(1) of the TD]~~ [deleted]
- 4.3.5 R ~~The interim management statement must provide:~~
- (1) ~~an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the issuer and its controlled undertakings, and~~
 - (2) ~~a general description of the financial position and performance of the issuer and its controlled undertakings during the relevant period.~~
~~[Note: article 6(1) of the TD]~~ [deleted]
- 4.3.6 R ~~An issuer which publishes quarterly financial reports:~~
- (1) ~~in accordance with national legislation; or~~

- (2) ~~in accordance with the rules of the *regulated market*, or~~
- (3) ~~of its own initiative,~~

~~will be taken as satisfying the requirement to make public the statements required by *DTR 4.3.2 R*.~~

~~[Note: article 6(2) of the *TD*] [deleted]~~

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*) ~~and interim management statements (*DTR 4.3*)~~ do not apply to a state, a regional or local authority of a state, a public international body of which ~~are~~ at least one *EEA State* is a member, the ECB and *EEA States'* national central banks.

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

Debt issuers

- 4.4.2 R The *rules* on annual financial reports in *DTR 4.1* (including *DTR 4.1.7R (4)*); and half-yearly financial reports (*DTR 4.2*) ~~and interim management statements (*DTR 4.3*)~~ do not apply to an *issuer* that issues exclusively *debt securities admitted to trading* the denomination per unit of which is at least 100,000 euros (or an equivalent amount).

~~[Note: article 8(1)(b) of the *TD* and article 45(1) of the *Audit Directive*]~~

...

Issuers of convertible securities

- 4.4.5 R The *rules* on half-yearly financial reports (*DTR 4.2*) ~~and Interim management statements (*DTR 4.3*)~~ do not apply to an *issuer* of *transferable securities* convertible into *shares*.

Issuers of preference shares

- 4.4.6 R ~~The *rules* on interim management statements (*DTR 4.3*) do not apply to an *issuer* of *preference shares*. [deleted]~~

Issuers of depository receipts

- 4.4.7 R The *rules* on half-yearly financial reports (*DTR 4.2*) ~~and interim management statements (*DTR 4.3*)~~ do not apply to an *issuer* of depository receipts.

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 annual

financial reports in *DTR 4.1* (other than *DTR 4.1.7R(4)* which continues to apply); and half-yearly financial reports (*DTR 4.2*) and ~~interim management statements (*DTR 4.3*)~~.

...

6.3 Dissemination of information

Application

...

6.3.5 R ...

- (3) The announcement relating to the publication of the following *regulated information* must include an indication of which website the relevant documents are available:
- (a) an annual financial report that is required by *DTR 4.1* to be made public; and
 - (b) a half-yearly financial report that is required by *DTR 4.2* to be made public; and
 - (c) ~~an interim management statement that is required by *DTR 4.3* to be made public or an equivalent quarterly financial report.~~
[deleted]

[Note: article 12(3) of the *TD implementing directive*]

...

8 Annex 2R Headline codes and categories

Headline code	Headline Category	Description
...		
High priority		
...		
IR	Half-year Report	Announcement of half-year/second quarter financial results
IMS	Interim Management Statement	A twice-yearly statement of material events and transactions during the period
IOD	Issue of Debt	Notification of an issue of debentures, debenture or loan stock, bonds and notes, whether secured or unsecured
...		

TP 1 Disclosure and transparency rules

DTR Sourcebook - Transitional Provisions

(1)	(2) Material to which the Transitional provisions provision applies	(3)	(4) Transitional provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...					
19	<u>DTR 4.1</u> , and <u>DTR 4.2</u> and DTR 4.3	R	The <i>rules</i> on annual financial reports (<i>DTR 4.1</i>), and half-yearly financial reports (<i>DTR 4.2</i>) and interim management statements (<i>DTR 4.3</i>) do not apply to <i>issuers</i> of exclusively <i>debt securities</i> the denomination per unit of which is at least 50,000 euros or in the case of <i>debt securities</i> denominated in a currency other than euro, the value of such denomination per unit is at the date of the issue equivalent to at least 50,000 euros which have already been <i>admitted to trading</i> on a <i>regulated market</i> in the EU before 31 December 2010. [Note: article 8.1 <i>TD</i>]	From 1 July 2012 for as long as the <i>debt securities</i> to which (19) applies are outstanding	1 July 2012
...					

Annex C

Amendments to the Listing Rules sourcebook (LR)

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

17 Debt and specialist securities

...

17.3 Requirements with continuing application

...

Annual accounts

...

17.3.6 G An *issuer* that meets the following criteria is not required to comply with LR 17.3.4R:

- (1) The *issuer* is an *issuer of asset backed securities* and would if it were a debt *issuer* to which DTR 4 applied be relieved of the obligations to draw up and publish annual, and half yearly financial reports ~~and interim management statements~~ in accordance with DTR 4.4.2R provided the *issuer* is not otherwise required to comply with any other requirement for the publication of annual reports and accounts.

...

...

Financial Conduct Authority



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