HM Treasury

FCA
FINANCIAL CONDUCT AUTHORITY

Implementation of the Transparency Directive Amending Directive (2013/50/EU) and other Disclosure Rule and Transparency Rule Changes

March 2015

Consultation Paper

CP15/11**

Contents

The Financial Conduct Authority and HM Treasury invite comments on this joint Consultation Paper by 20 May 2015.

You can send them in writing to:

Kate Hinchy
Markets Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 8832
Email: cp15-11@fca.org.uk

Daniel Wright
Financial Services
HM Treasury
1 Horse Guards Road
SW1A 2HQ

Telephone: 020 7270 7800
Email: Daniel.Wright@HMTreasury.gsi.gov.uk

It is the policy of both the FCA and HM Treasury to 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. All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 706 0790 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS

Abbreviations used in this paper

CBA	Cost benefit analysis
DTR	Disclosure Rules and Transparency Rules
EC	European Commission
EFSF	European Financial Stability Facility
ESMA	European Securities and Markets Authority
EU	European Union
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
LR	Listing Rules
MAD	Market Abuse Directive (2003/6/EC)
MiFID	Markets in Financial Instruments Directive (2004/39/EC)
PD	Prospectus Directive (2003/71/EC)
RTS	Regulatory Technical Standard
TD	Transparency Directive (2004/109/EC)
TDAD	Transparency Directive Amending Directive (2013/50/EU)
TDID	Transparency Directive Implementing Directive (2007/14/EC)
the Treasury	HM Treasury

1. Overview

Introduction

1.1 This Consultation Paper sets out proposals to implement the Transparency Directive Amending Directive 2013/50/EU (TDAD), which amends the Transparency Directive (TD), the Transparency Directive Implementing Directive (TDID) and the Prospectus Directive (PD). The responsibility for implementing the TDAD is shared between HM Treasury (the Treasury), which has the power to make changes to the Financial Services and Markets Act 2000 (FSMA), and the Financial Conduct Authority (FCA), under its Disclosure Rules and Transparency Rules (DTRs). This is a joint consultation between the Treasury and the FCA. This Consultation Paper delineates the relevant areas of responsibility for each body through the provision of separate commentary and, where applicable, legal drafting. However, you can make a single response to both bodies using the contact details provided in this Consultation Paper.

1.2 The FCA is also taking this opportunity to propose other miscellaneous changes to the DTRs.

Background

1.3 The TD creates a framework for companies to adopt similar standards around information disclosure. It focuses on regulated information that has to be disclosed periodically, shareholder disclosures and the dissemination of regulated information.

1.4 Following a review of the TD by the European Commission (EC), the TDAD came into force on 26 November 2013. Each Member State is required to implement the TDAD within 24 months of that date.

Early implementation of specific TDAD amendments

1.5 At the Treasury's request, the FCA has already implemented the new requirement to report on payments to governments, which is effective for financial years beginning on or after 1 January 2015. Also at the Treasury's request, the FCA has already removed the TD requirement to publish interim management statements. Both changes are reflected in the DTRs contained in the FCA Handbook.

Implementation of remaining TDAD amendments

1.6 The implementation of the remaining provisions of the TDAD are addressed in this Consultation Paper. Participants have two months to respond: the submission deadline is 20 May 2015. This is a shortened consultation period to allow adequate time for the Treasury to confer the necessary FSMA rulemaking powers on the FCA, and to allow changes to be implemented by the deadline of 26 November 2015.

Non TDAD amendments to the DTRs

1.7 The FCA is also taking this opportunity to propose miscellaneous changes to the DTRs that are not required by the TDAD, but will improve or clarify existing rules in the FCA Handbook.

Who does this consultation affect?

1.8 This Consultation Paper 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
- listed companies who are required by LR9.2.6BR, LR14.3.23R or LR18.4.3R to comply with DTR4, DTR5 and DTR6 as if they were an issuer for the purposes of the DTRs
- issuers of securitised derivatives who, pursuant to LR19.4.11BR, the FCA considers should comply with DTR4, DTR5 and DTR6 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
- firms advising persons investing or dealing in listed securities
- firms or persons investing or dealing in listed securities
- primary information providers

Is this of interest to consumers?

1.9 This Consultation Paper 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 a prescribed market

Context and summary of proposals

1.10 This Consultation Paper sets out in broad terms the proposed amendments to FSMA that would be implemented by the Treasury. It also details the FCA implementation through the DTRs, and sets out the proposed rule changes required as a result of the TDAD modifications (aside from the changes already implemented in the UK), including:

- the requirement to disclose voting rights arising from holdings of financial instruments that have a similar economic effect to holding shares
- the extension of the deadline to publish half-yearly reports and the period of time for which financial reports are publicly available
- changes to the rules on the home Member State
- a new stabilisation exemption

- changes to the definition of an issuer

1.11 The Consultation Paper identifies other modifications to TDAD provisions that may impact the current regime but either do not require new or amended DTRs to implement, or are not required yet. These include:

- the introduction of minimum administrative measures and sanctions
- National Storage Mechanism – central access point
- harmonised electronic reporting format

1.12 The FCA has also taken the opportunity to review the DTRs and propose other changes that it has identified as being required to improve the current UK regime. These are set out in Section 5 and include:

- current treatment of stock lending and borrowing in DTR5.1.1R(5) and DTR5.1.3R(6)
- the treatment of investment managers under DTR5.1.5R
- the current drafting of DTR5.11.6R
- the equivalence provisions for third country issuers (non-EEA issuers)

1.13 The purpose of this consultation is to obtain feedback from investors, issuers and market participants about our proposals for implementing the TDAD and our proposals on other modifications which may impact the current regime as a result of the TDAD; and also the FCA's proposals on other DTR changes.

Equality and diversity considerations

1.14 The FCA has assessed the likely equality and diversity impacts of its proposals and does not think they give rise to any concerns, but would welcome any comments.

Next steps

1.15 We want to know what you think of our proposals. Please send us your comments by 20 May 2015 in writing.

1.16 We intend to publish our feedback towards the end of the year.

2. HM Treasury FSMA implementation

Introduction

2.1 This section looks at the measures in the TDAD for which HM Treasury has responsibility. These measures will be implemented in UK law through FSMA.

2.2 The Government's 'better regulation' policy requires the principle of 'copy out' to be used where possible. Where consistent with FSMA, EU legislation will be subject to direct 'copy out' into UK law.

2.3 We welcome comments on any aspect of the implementation and in particular we welcome information on the likely costs and benefits of the changes required. Where we are seeking views on a specific point, we have inserted a consultation question.

2.4 The Treasury intend to make a draft Statutory Instrument with the relevant amendments to FSMA available for comment at a later stage.

Sanctions Regime

2.5 An objective of the TDAD was to create a minimum standard for the sanctions regimes that Member States must have in place for breaches of transparency rules.

2.6 Accordingly, the TD mandates 'effective, proportionate and dissuasive' sanctioning regimes in Member States. These include minimum sanction requirements for certain failures of disclosure in terms of fines.

2.7 Article 28b(2) of the TD also mandates that for breaching the rules around major shareholding notifications, voting rights can be suspended. Member States can specify that voting rights are only to be suspended for the most serious breaches of notification rules. The minimum requirements are generally consistent with the FCA's present sanctioning regime and the regulator's powers under FSMA.

2.8 New Article 28b(1)(b) of the TD specifies that competent authorities should be able to impose: "an order requiring the natural person or the legal entity responsible to cease the conduct constituting the breach and to desist from any repetition of that conduct".

2.9 The Treasury proposes that the FCA use the existing court-based procedure of section 380 of FSMA to meet this requirement. This power enables the FCA to seek an order from the court in the event of a person breaching a 'relevant requirement'. This order will require the person to remedy the breach.

2.10 However, there are areas in which FSMA will have to be amended to accommodate the requirements of the TDAD regarding sanctions.

2.11 In particular, revised Article 28 of the TD mandates that sanctions be applied to "the members of administrative, management or supervisory bodies of the legal entity concerned". Section 91(2) of FSMA currently mandates that 'directors knowingly concerned with a contravention' can be sanctioned for such breaches. FSMA will therefore need to be amended to ensure that all those referred to in Article 28 can be sanctioned, including members of entities which are not bodies corporate.

2.12 To meet the requirement of Article 28b(2) to provide for the possibility of suspension of voting rights, we are proposing an amendment to Part 6 of FSMA giving the FCA power to apply to the courts for a suspension. This approach follows Article 24 of the TDAD, which envisages that this power can be exercised through application to the competent judicial authorities. This is an appropriate means of ensuring the FCA has the necessary powers to meet the requirements of the Directive but without unnecessarily extending the powers of the FCA.

2.13 The TDAD gives Member States discretion in terms of how they apply the power to suspend voting rights for breaching notification requirements. Specifically, Member States may provide that suspension of voting rights applies only to 'the most serious breaches'

2.14 We do not believe there is justification for applying the suspension of voting rights power beyond these most serious breaches: the FCA can utilise other sanctions as it feels appropriate for lesser breaches.

2.15 In terms of transposing into UK law the limitation that the power to apply to the court can only be exercised for the most serious breaches, the Treasury is considering options including defining the "most serious breaches". We are discussing the most appropriate definition with the FCA, and seeking views in this consultation as to the best approach to transposition for this aspect. We welcome any comments on the topic.

Consultation 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?

Publication of decisions related to sanctions and measures

2.16 The TDAD publication requirements in Article 29 differ slightly from other EU Directives with similar provisions that have been transposed through FSMA.

2.17 We plan to amend Part 26 of FSMA (notices) which deals with publication of decision notices and final notices given by FCA to make specific provision in the terms of Article 29. We are proposing to add a new section to FSMA covering the publication of decisions for sanctions and measures relating to the TDAD, largely following Section 391A of FSMA but with changes where necessary. The transposition would fit within the existing FSMA framework for decision notices and final notices on this aspect but amend it to reflect the language of TDAD, notably the fact that there is a *right* to publish anonymously rather than an *obligation* to do so.

Consultation Questions

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

Disregarded holdings

2.18 In relation to disregarded holdings there is overlap between the TDAD and Single Market Directives. The Treasury is therefore giving consideration as to whether consequential changes to FSMA are appropriate as a result of the changes being made by the TDAD. A possible way of making this change would be to amend Sections 184, 301E and 422A of FSMA to add shares covered by Article 9(6a) to the existing categories of shares disregarded for the purposes of the control regimes in Parts 12 and 18 of FSMA. The Treasury is discussing the issues with the relevant bodies, including the FCA and the Prudential Regulation Authority, and invites consultees to comment on this issue.

3. DTR implementation

3.1 This section sets out the FCA proposals for those amendments made to the TD by the TDAD which will be implemented through the DTRs. These proposals have been developed in close consultation with the Treasury.

Requirement to disclose voting rights arising from holdings of financial instruments that have a similar economic effect to holding shares

3.2 The TD sets out requirements for the disclosure of major voting rights arising from holdings of shares by investors. Several Member States, including the UK, are currently super-equivalent to the TD with respect to the shareholder notification requirements. We extended the scope of the UK disclosure regime in June 2009[1] to include contracts for difference positions, and holdings of other financial instruments which have a similar economic effect to (but are not) qualifying financial instruments (i.e. they do not have a legal right to acquire shares, but have a similar effect in practice).

3.3 The TDAD now introduces the requirement to disclose holdings of financial instruments with similar economic effect to holding shares and entitlements to acquire shares. The amendment to the TD aims to address concerns that these financial instruments may lead to influence on the issuer by the holder through stake building.

3.4 Although the current UK regime will not alter greatly in this area, the revised TD does not provide for a standalone client-serving intermediary exemption that is distinct from the existing market maker and trading book exemptions (as currently contained in the DTRs). We introduced this concept to exempt persons from the disclosure obligations where they hold financial instruments that have a similar economic effect to qualifying financial instruments in order to satisfy client needs, and where they themselves do not use their holding to intervene in or exert influence over the management of the issuer in question. We set out detailed rules on what types of firms could take advantage of this exemption and requested an annual certificate.

3.5 Under the revised TD, transactions executed in a client-serving capacity will have to rely instead on the existing TD trading book exemption, as set out in a new Regulatory Technical Standard (RTS)[2] rather than benefitting from a standalone exemption. The trading book exemption is a partial exemption (capped at 5%) rather than the complete exemption currently contained in our DTRs. Therefore, financial instruments with similar economic effect held in a client-serving capacity will need to be aggregated with the holder's position in other financial instruments of

1 www.fsa.gov.uk/pubs/policy/ps09_03.pdf

2 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.
(To note, this wording is copied from the RTS set out in ESMA's final report to the EC. The wording might change ahead of publication of the RTS by the EC in the Official Journal)

the same issuer. If the aggregated holding reaches or crosses the 5% trading book exemption threshold, the holder will have to disclose that holding.

3.6 Consequently, implementing the TDAD fully means we are unable to maintain the standalone client-serving intermediary exemption in the DTRs. Therefore, we propose deleting:

- DTR5.3.1R(2), which provides the current exemption from notification of holdings by client-serving intermediaries
- DTR5.3.1R(3), which sets out the conditions for a client-serving intermediary
- DTR5.3.1R(4)
- DTR5.3.1R(5)

3.7 In place of the deleted rules we will reproduce for the convenience of the reader the new RTS (including the relevant recitals to the RTS) which addresses client-serving transactions in the Handbook in new DTR5.3.1B. We also propose including a new definition of "trading book" in the Glossary as provided in the TDAD.

Q1: Do you agree with the proposal to delete DTR5.3.1R(2), DTR5.3.1R(3), DTR5.3.1R(4) and DTR5.3.1R(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?

3.8 We also propose making a consequential amendment to DTR5.3.1R(1)(b), which requires notification of financial instruments with similar economic effect, to remove the cross-reference in that rule to the client-serving intermediary exemption and to remove the exception for non-UK issuers as this is no longer permitted in the light of the TDAD.

Q3: Do you agree with the proposal to make a consequential amendment to DTR5.3.1R(1)(b) to remove the cross reference to the current client-serving intermediary exemption and to remove the exception for non-UK issuers?

3.9 The new TD requirement to disclose holdings of financial instruments with similar economic effect to holding shares is set out in new Article 13(1)(b) of the revised TD. The notification of Article 13(1)(a) and (b) holdings[3] shall be made in accordance with existing Article 9 notification requirements.

3.10 Previously, we included financial instruments having similar economic effects to (but not including) qualifying financial instruments in DTR5.7.1R, which sets out the obligation to aggregate indirectly and directly held voting rights when making a notification of combined

3 Article 13 (1): The notification requirements laid down in Article 9 shall also apply to a natural person or legal entity who holds, directly or indirectly:
(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.

holdings. Under DTR5.7.1R we created four categories of voting rights held. However, now these instruments have been brought into scope of the TD we propose combining DTR5.7.1R(4) with DTR5.7.1(3), which currently only references qualifying financial instruments. By combining these two categories we would create one Article 13 category which reflects the revised TD text. We also propose rewording DTR5.7.1R(1). We will maintain DTR5.7.2G but include a note referencing to new Article 13a(2).

3.11 Although the Article 13 holdings are aggregated for the purposes of calculating thresholds and now fall under one category, the TDAD requires a notification to include the breakdown by type of financial instruments held in accordance with Article 13(1)(a) and (b) and to distinguish between the financial instruments which confer a right to a physical settlement and those which confer a right to a cash settlement. We propose to include these notification requirements in a new DTR5.3.5R. Our TR-1 form will remain the same to enable compliance with this element of the revised TD.

Q4: Do you agree with our proposal to delete DTR5.7.1R(4) and reword DTR5.7.1R(3) to reflect the Article 13(1)(a) and (b) text, to clarify DTR5.7.1R(1), and to include new notification requirements in DTR5.3.5R to reflect the Article 13(1) text?

3.12 Before financial instruments with similar economic effect fell within the scope of the TD, the FCA set out certain rules and guidance to assist with the UK super-equivalent regime, including certain exemptions from the UK regime. Now that these instruments are included in the revised Article 13 of the TD, we propose removing the provisions and guidance specifically included for our own regime. Instead we propose reflecting the revised TD text and relying on the RTS in future to ensure we maintain a harmonised approach with other Member States.

3.13 To implement this proposal we propose deleting DTR5.3.1R(2A), which sets out the types of instruments that we regarded as being outside the scope of the UK contracts for difference regime. These include nil paid rights received from an issuer during a rights issue, and rights to apply for open offer shares. We also propose deleting DTR5.3.1AG, which cross refers to the exemption set out under DTR5.3.1R(2A). We also propose deleting DTR5.3.3G(2). This sets out the FCA's view of what a financial instrument with similar economic effect to a qualifying financial instrument looks like in practical terms, by setting out the characteristics of the instrument. The guidance also addresses a financial instrument referenced to a basket or index of shares. These provisions will be replaced by the new RTS text[4] together with the relevant recitals, which we propose reproducing for the convenience of the reader in the DTRs in new DTR5.3.3B.

3.14 We have also included guidance in DTR5.3.2AG which cross refers to the indicative list of financial instruments that are subject to notification requirements pursuant to revised Article 13(1) of the TD and has been published by the European Securities and Markets Authority (ESMA).

4 Voting rights in the case of a financial instrument subject to notification requirements laid down in Article 13(1) of Directive 2004/109/EC and which is referenced to a basket of shares or an index shall be calculated on the basis of the weight of the share in the basket or index and if at least one 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; or
(b) The shares in the basket or index represent 20 % or more of the value of the securities in the basket or index.
2. When 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.
(To note, this wording is copied from the RTS set out in ESMA's final report to the EC. The wording might change ahead of publication of the RTS by the EC in the Official Journal)

3.15 Currently the TDID links the definition of financial instruments to the Markets in Financial Instruments Directive (MiFID). The TDAD removes this link and the TD does not define financial instruments. To reflect this we will remove the link to MiFID in DTR 5 (through amendments to DTR5.3.2R(1) and so that the term "financial instruments" is not linked to the definition in the Glossary) and going forward the characteristics of a financial instrument should be considered to assess whether a notifiable interest exists. This change will also be reflected in FSMA.

3.16 We also propose removing DTR5.8.2R(4), which currently stipulates that the notification must be made on a delta-adjusted basis (i.e. in relation to the underlying shares referenced on a proportionate basis). Instead we propose copying out new Article 13(1a) in a new DTR5.3.3AR and reproducing for the convenience of the reader in new DTR5.3.3C the RTS[5] (including the relevant recitals) which sets out the methods for determining delta in the DTRs.

Q5: Do you agree with our proposal to delete DTR5.3.1R(2A) and DTR5.3.1AG? Do you agree with our proposal to delete FCA specific guidance set out in DTR5.3.3G(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 DTR5.3.2R(1) and to remove the link to MiFID in DTR5? Do you agree with our proposal to delete DTR5.8.2R(4) and include a new DTR5.3.3AR and rely on the new RTS?

Extension of the deadline to publish half-yearly financial reports and the period of time for which financial reports are publicly available.

3.17 To provide additional flexibility, ease the regulatory burden and encourage long-term investment, the TDAD extends the deadline to publish half-yearly financial reports from two months to three months after the end of the period to which the report relates. We propose amending DTR4.2.2R(2) to reflect this change. The deadline to publish annual financial reports will remain the same.

3.18 The TDAD also increases the period of time for which both annual financial reports and half yearly financial reports shall remain publicly available, from five years to ten years. We propose amending DTR4.1.4R and DTR4.2.2R(3) to implement this change and intend to apply these new rules only to reports published on or after the date the new rules come into force.

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 DTR4.1.4R, DTR4.2.2R(2) and DTR4.2.2R(3)?

Q7: Do you agree with the proposal to apply revised DTR4.1.4R and DTR4.2.2R(3) only to reports published on or after the date new rules enter into force?

5 The draft regulatory technical standard is set out under Article 5 of ESMA's final report to the EC www.esma.europa.eu/system/files/esma-2014-300_consultation_paper_on_draft_rts_on_major_shareholdings.pdf (to *note the wording might change ahead of publication of the RTS by the EC in the Official Journal*)

Changes to rules on the home Member State

3.19 The rules on choice of home Member State have been changed by the TDAD to prevent an issuer from failing to declare a home Member State for the purposes of the TD. To implement this change, we propose:

- updating DTR6.4.2R to require an issuer whose home Member State is the UK, or who chooses the UK as its home Member State, to disclose that in accordance with DTR6.2 and DTR6.3
- making a consequential updating amendment to DTR6.4.1R.

3.20 The revised Article 2.1(i) of the TD contains:

- the revised definition of home Member State
- the framework for an issuer to choose its home Member State
- the option for an issuer to change their home Member State if its securities are no longer admitted to trading on a regulated market in its home Member State

3.21 We also propose introducing a new DTR6.4.3R to reflect the revised Article 2.1(i) of the TD, which requires an issuer to disclose its home Member State to the competent authorities of:

- the Member State where it has its registered office, where applicable
- the home Member State
- all host Member States

3.22 Revised Article 2(1)(i) of the TD also sets out the situation in the event of an absence of disclosure by the issuer of its home Member State. We propose introducing new DTR6.4.4R to reflect this.

3.23 The definitions of "Home State" and "Host State" will also be updated in the Glossary section of the FCA Handbook to reflect these changes.

Q8: Do you agree with our proposal to update DTR6.4.1R and DTR6.4.2R, to include a new DTR6.4.3R and DTR6.4.4R and to amend the Glossary definitions of "Home State" and "Host State" to reflect the changes to the rules on home Member State?

3.24 The TDAD amends paragraph (iii) of the definition of "home Member State" in Article 2.1(m) of the Prospectus Directive (PD) so that there is consistency between the TD and the PD. We do not consider that any changes are required to the Handbook as a result of the amendment.

3.25 We will also include transitional provisions for DTR6.4.2R, DTR6.4.3R and DTR6.4.4R reflecting the last two paragraphs of revised Article 2(1)(i) where an issuer already has securities admitted to trading on a regulated market but has not yet disclosed its home Member State and where an issuer has already chosen its home Member State and has communicated that choice to the competent authority of the home Member State (DTR TP1(26)).

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

Stabilisation

3.26 New Article 9(6a) of the TD creates a new exemption from the vote holder notification obligations for voting rights attached to shares that have been acquired for stabilisation purposes in accordance with Commission Regulation (EC) No 2273/2003 of 22 December 2003[6] provided the voting rights attached to those shares are not exercised or otherwise used to intervene in the management of the issuer. To implement this new exemption we propose adding a new paragraph (7) to DTR5.1.3R which sets out the shares which are disregarded when determining whether a person has a notification obligation. The new DTR5.1.3R(7) will copy out the Article 9(6a) wording.

Q10: Do you agree with our proposal to implement the stabilisation exemption in a new rule DTR5.1.3R(7)?

3.27 We also propose amending DTR5.1.3R(1),(2),(3) and (4) to reflect the new Article 13(4) requirement for these exemptions to apply to both Article 9 and Article 13 holdings and to reflect a small amendment made by the TDAD to Article 9(6).

Q11: Do you agree with our proposal to amend DTR5.1.3R(1),(2),(3) and (4) to reflect new Article 13(4) and the revised Article 9(6) of the TD?

Aggregation of holdings

3.28 New Article 9(6b) of the TD mandated ESMA with developing draft regulatory technical standards to specify the method of calculating thresholds for the purposes of Article 9(5) and 9(6). We propose reproducing the RTS[7] text in new DTR5.1.4A and DTR5.1.4B for the convenience of the reader.

Definition of an issuer

3.29 The TDAD revises Article 2 of the TD to amend the definition of "issuer" to mean 'a natural person, or a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market'. The definition is also amended to clarify the treatment of non-listed securities represented by issuer depository receipts. We propose amending our Glossary definition of "issuer" for the purposes of the DTRs to incorporate these changes and to make a consequential change to the Glossary definition of "shareholder" for consistency.

6 www.esma.europa.eu/system/files/MADImplReg_2273_2003.pdf

7 The draft regulatory technical standard is set out under Article 3 of ESMA's final report to the Commission www.esma.europa.eu/system/files/esma-2014-300_consultation_paper_on_draft_rts_on_major_shareholdings.pdf (*to note the wording might change ahead of publication of the RTS by the EC in the Official Journal*)

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"?

Other

3.30 In order to reduce the administrative burden for issuers, the TDAD has deleted the second subparagraph of Article 19(1). This is currently copied in DTR6.1.2R and stipulates that an issuer of transferable securities proposing to amend its constitution must communicate the draft amendment to the FCA, and to the regulated market on which its securities have been admitted to trading. The rule also specifies that the communication must be effected without delay, and at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment.

3.31 This requirement has been deleted from the TD because Article 5(4) of the Shareholders' Rights Directive (2007/36/EC) already requires issuers having shares admitted to trading on a regulated market to make both the proposal and the invitation to general meeting of shareholders publicly available. Although the Shareholders' Rights Directive only applies to issuers with shares admitted to trading on a regulated market, the Market Abuse Directive requires issuers with any type of financial instruments admitted to trading on a regulated market to disclose information which is likely to have a significant effect on the price of the financial instruments admitted to trading (as set out in DTR2.2).

3.32 Therefore, we propose deleting DTR6.1.2R and relying instead on the UK provisions which implement the relevant parts of the Shareholders' Rights Directive and the Market Abuse Directive (MAD).

3.33 We also propose making a consequential amendment to LR17.5.2R, to remove the cross-reference to DTR6.1.2R.

Q13: Do you agree with proposal to delete DTR6.1.2R 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 LR17.5.2R?

3.34 DTR 6.1.11R currently sets out the requirement for 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) to disclose to the public without delay any new loan issues, and in particular any guarantee or security in respect of such issues. This had been copied from Article 16(3) of the TD, which has now been deleted by the TDAD. This requirement overlaps partially with the Article 3 obligation in the Prospectus Directive (PD) to publish a prospectus, and with Article 6 of MAD. Therefore, we propose deleting DTR6.1.11R to reflect the amendment in the TD.

Q15: Do you agree with our proposal to delete DTR6.1.11R following the removal of this provision from the TD?

3.35 We also propose making a consequential change to DTR5.8.3R to reflect the new wording in revised Article 12(2) of the TD, and remove the wording 'the first of which shall be the day'.

3.36 DTR4.4.1R currently copies the wording in Article 8(1)(a) of the TD, which provides an exemption for a state, a regional or local authority of a state, and others, from complying with the TD financial reporting requirements. This Article has been updated to include the European Financial Stability Facility (EFSF) established by the EFSF Framework Agreement, as well as any other mechanism established with the objective of preserving the financial stability of European monetary union by providing temporary financial assistance to the Member States whose currency is the euro. We propose amending DTR4.4.1R to reflect this revised wording.

Q16: Do you agree with the consequential and minor changes we propose to DTR5.8.3R and DTR4.4.1R?

Amendments to Glossary of definitions

3.37 The TDAD changes require amendments to certain Glossary definitions for the purposes of the DTRs. These are detailed in Annex A of the FCA instrument attached in Appendix 1.

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

Transitional Provisions

3.38 Following review of the FCA Handbook, other than the transitional provisions in respect of DTR6.4.2R, DTR6.4.3R and DTR6.4.4R, we are of the view that no other transitional provisions are required in the DTRs as a result of the TDAD amendments to the TD.

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?

4. Other TDAD modifications

4.1 This section summarises other TDAD modifications that may impact the current regime through a change in FSMA or a future RTS, but will not (at this time) require new or amended DTRs. We highlight these amendments to publicise the changes and further work being conducted at a European level.

Minimum administrative measures and sanctions introduced

4.2 To improve compliance, new Article 28b is included. This introduces minimum administrative measures and sanctions to apply at least in circumstances where there has been:

- a failure by the issuer to make public, within the required time limit, information required under the national provisions adopted in transposition of Articles 4, 5, 6, 14 and 16

  or

- a failure by the natural or the legal person to notify, within the required time limit, the acquisition or disposal of a major holding in accordance with the national provisions adopted in transposition of Articles 9, 10, 12, 13 and 13a.

4.3 The amendments also require that in the event of a breach where obligations apply to legal entities, sanctions can also be applied to members of the administrative, management and supervisory bodies of the legal entities concerned. As set out in Section 2, the Treasury considers that the UK is already largely compliant with these requirements through powers in FSMA, primarily those in Part VI.

4.4 However, it will be necessary to introduce a new power to suspend the exercise of voting rights attached to the shares for certain breaches of TD requirements (although Member States have the discretion to provide for this power only for the most serious breaches). To implement this requirement, the Treasury proposes inserting a new standalone power in FSMA to allow the FCA to apply to the Court for an Order suspending voting rights, if the Court is satisfied that a provision of the TD has been contravened by a vote holder of an issuer. This sanction will only apply to the most serious breaches. As mentioned in Section 2, the Treasury will make a draft statutory instrument with the relevant amendments to FSMA available for comment at a later stage.

4.5 New Article 28b(1)(b) requires the competent authority to have the power to impose an order requiring a natural person or legal entity to cease conduct which constitutes a breach under Article 28a and to desist from any repetition of that conduct. We consider that the failure of issuers is already covered by existing enforcement powers, ultimately leading to possible suspension for a breach. Relying on existing section 380 FSMA powers will be simpler than having a new own initiative power over shareholders whom we do not otherwise have powers over in the listing regime. The Treasury have asked for feedback on these proposals in Section 2 of this Consultation Paper.

National Storage Mechanism – central access point

4.6 The revised TD stipulates that to facilitate cross-border investment, investors should be able to easily access regulated information for all listed companies in the EU. In order to ensure cross-border access, new Article 21a of the TD mandates ESMA with establishing and operating a web portal serving as a European electronic access point by 1 January 2018. Work will continue on this at a European level.

Introduction of a harmonised electronic reporting format for annual financial reports

4.7 The TDAD stipulates that a single electronic reporting format for annual financial reports will be mandatory with effect from 1 January 2020 (provided that a cost benefit analysis has been completed by ESMA). The aim is to make reporting easier and facilitate accessibility, analysis and comparability of annual financial reports. ESMA will develop draft regulatory technical standards to specify the reporting format and will consult on their proposals. This work continues at a European level.

Access to regulated information at a Union Level

4.8 The TDAD mandates ESMA with developing draft regulatory technical standards setting out technical requirements regarding access to regulated information. ESMA published their Consultation Paper on 19 December 2014. Following a review of the subsequent feedback, the draft RTS will be submitted to the Commission by November 2015.

5.
Other proposed DTR changes

Stock lending and borrowing

5.1 Before the TD provisions regarding shareholder notifications were implemented in 2007, the Companies Act 1985 set out the domestic regime for shareholder notifications. Under this regime stock lenders could conclude that, on entering a loan agreement, they both dispose of (lend) and acquire (right of recall) matching interests in the same shares, thereby netting off their interests and releasing them from the obligation to notify a change in position (section 208(5)).

5.2 The TD does not cover the issue of stock lending, in particular whether the right of recall means that a 'disposal' of shares has not taken place for TD purposes. The term 'disposal' is not defined in the TD.

5.3 During our implementation of the TD, we consulted on and chose to replicate the effect of the provisions in the Companies Act 1985. DTR5.1.1R(5) sets out that, where there is a right of redelivery for the lender in a stock lending contract, this is not a 'disposal' for the purposes of the TD.

5.4 However, the TD Assessment Report prepared for the EC by Mazars in 2009[8] highlighted legal concerns about a potential loophole regarding stock lending. The report concluded that a typical stock lending agreement results in a transfer of ownership of the lent shares, so the transactions should therefore be notified by both the lender and the borrower under Article 9 of the TD.

5.5 Following this report, the EC consulted on the modernisation of the TD and respondents argued for the need to improve transparency around stock lending practices. It also became apparent that these transactions were treated differently by Member States.

5.6 Although the subsequent revised TD remained silent on the issue of stock lending, ESMA took the opportunity to clarify the treatment of stock lending transactions under the TD when establishing their indicative list of financial instruments under Article 13 (1b) of the revised TD.

5.7 This list contains financial instruments that fall within the scope of Article 13 and are subject to the Article 9 notification requirements. ESMA included "right of recall" shares in this list. In ESMA's final report to the EU[9] it suggested that their inclusion is merited by the uncertainty regarding regulatory practices in the disclosure of right of recall shares.

8 www.mazars.co.uk/Home/News/Our-publications/General-publications/Transparency-Directive-Assessment-Report
9 www.esma.europa.eu/system/files/2014-1187_final_report_on_draft_rts_under_the_transparency_directive.pdf

5.8 In consideration of ESMA's view that right of recall shares should be disclosed, we propose revisiting our treatment of stock lending by requiring disclosure of both lending and borrowing under Article 9 of the TD. The aim of this proposal is to harmonise our notification requirements for these transactions with other Member States, and ensure we are fully compliant with the intention of the TD.

5.9 To promote transparency we propose a stock lending transaction should be disclosed by the lender and the borrower. The lender's disclosure would detail the change in nature of their holdings from stock-owner to right-of-recall holder, and the borrower's disclosure would detail their ownership of the stock and the obligation to return the shares.

5.10 We are proposing to apply Article 9 notification requirements to stock lending transactions because of our desire to implement the TD correctly and harmonise our approach with other Member States, rather than in response to identified market failings. Therefore, we feel it is appropriate to apply the EU minimum notification thresholds to stock lending transactions. We do not want to impose unnecessarily onerous regulation in this area, which might lead to over-reporting. Imposing the minimum thresholds will result in meaningful reporting and increase transparency around the nature of holdings. This minimum harmonising approach mirrors our proposed treatment of investment managers under DTR5.1.5R, which is also addressed in this Section.

5.11 To implement this change we propose deleting DTR5.1.1(5)R, which in practice exempts lenders from the requirement to disclose stock lending transactions.

5.12 We also propose deleting DTR5.1.3R(6), which provides the borrower with an exemption from disclosure provided the borrowed shares are on-lent or otherwise disposed of by the close of business on the next trading day and the borrower does not declare any intention of exercising (and does not exercise) the voting rights attaching to the shares.

5.13 Instead we are proposing a new provision in DTR5.1.5R(1)(e) which allows both borrowers and lenders under a stock lending contract to disclose their respective transactions at the EU minimum thresholds (i.e. at the 5%, 10% and higher thresholds).

5.14 The new notifications should be made using the existing TR-1 form, and the detail of the nature of the holding of the lender or borrower should be included in the column 'Type of financial instrument'.

5.15 We would not expect a holding acquired during a day but disposed of before the end of the day to be disclosed. This is consistent with DTR5.8.11R, which sets out that in determining whether a notification is required, a person may assess their holding at a point in time up to midnight of the day for which the determination is made.

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 DTR5.1.5R(1)(e)) and our proposal to apply the EU minimum thresholds?

Equality of treatment of investment managers under DTR5.1.5R

5.16 Currently under DTR 5.1.5R, for the purpose of determining whether a notification obligation exists, certain voting rights are to be disregarded except when determining whether the 5% and 10% (and higher) thresholds have been reached or crossed. These include voting rights attached to shares which may be exercisable by the operators of certain types of collective investment scheme, and also those attaching to shares lawfully managed by another person on their owner's behalf.

5.17 In addition, DTR 5.1.5R(1)(d) and DTR5.1.5R(2)(e) provide that the FCA may prescribe another category of "investment entity or investment manager" (i.e. in addition to those specifically mentioned in DTR 5.1.5R), whose exercisable voting rights attaching to shares must be disregarded except at the 5%, 10% and higher thresholds. In effect, those who the FCA prescribe under DTR5.1.5R(1)(d) and DTR5.1.5R(2)(e) do not have to comply with the UK super-equivalent obligations.

5.18 During the original implementation of the TD we examined the general regulation and major shareholding disclosure obligations of investment managers in the United States (US). We used the powers under DTR5.1.5R(1)(d) to determine that US investment managers would be subject to the same notification obligations as EEA firms under this rule, as opposed to the UK super-equivalent obligations. UK super-equivalent obligations require disclosure of major shareholdings at 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10% and each 1% threshold thereafter up to 100%. In the case of a non-UK issuer these thresholds are 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%.On review of these rules, it has become apparent there is a lack of transparency about how widely the exemption is being used, as we do not require any written certification or confirmation. Furthermore, while we are able to impose super-equivalent thresholds under the TD in this instance, there is an issue of equality where we are treating US investment managers differently from other non-EEA investment managers on the basis of their jurisdiction. This creates an uneven playing field.

5.19 In consideration of this, we propose extending the exemption and allowing all investment managers (including those in the UK) to disclose at the EU minimum standard, irrespective of their jurisdiction. We suggest this proposal will not have an adverse impact on the market as both EEA and US investment managers currently disclose at the 5% threshold without any obvious problems. Therefore we do not anticipate that widening the exemption to all investment managers would lead to a significant decrease in the number of notifications we receive. We do recognise there is a possibility that it would reduce transparency at the margin, but only to the EU minimum standard.

5.20 Therefore, we propose deleting DTR5.1.5R(1)(d) and amending DTR5.1.5R(2)(e) to clearly set out that all investment managers may make vote holder notifications at the EU minimum notification thresholds.

Q20: Do you agree with our proposed deletion of DTR5.1.5R(1)(d) and our proposed amendment to DTR5.1.5R(2)(e), which allow all investment managers to make vote holder notifications at the EU minimum thresholds?

Third Country Exemption in DTR4.4.8R, DTR5.11.4R, DTR5.11.6R and DTR6.1.16R

5.21 Article 23(1) of the TD stipulates that Member States may exempt third country issuers from certain TD requirements, provided that the law of the third country in question lays down equivalent requirements. We have transposed this into DTR4.4.8R, DTR5.11.4R, DTR5.11.6R and DTR6.1.16R.

5.22 However, Article 23(1) states further that the competent authority of a Member State may also exempt issuers from certain TD requirements if they comply with the requirements of the law of a third country (i.e. another third country with whose requirements the issuer is in compliance) and the competent authority of the home Member State consider these to be equivalent. We now propose amending DTR4.4.8R, DTR5.11.4R and DTR6.1.16R to include the full Article 23(1) wording. This will also require consequential amendments to our guidance under DTR4.4.9G, DTR5.11.5G and DTR6.1.17G.

5.23 The existing equivalence decisions will remain for the time being, but we will revisit all decisions following the changes to the existing regime made by the revised TD. We anticipate conducting this exercise shortly after implementation of the TDAD.

Q21: Do you agree with our proposal to amend DTR4.4.8R, DTR5.11.4R and DTR6.1.16R to reference the Article 23(1) provision in its entirety and to make consequential amendments to DTR4.4.9G, DTR5.11.5G and DTR6.1.17G?

5.24 Currently, DTR5.11.6R provides an exemption from the vote holder notification requirements set out in DTR5.1.2R for 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 the TD.

5.25 This exemption has been incorrectly transposed into the DTRs. Article 23(1) of the TD exempts third country issuers from the obligations set out in Article 12(6) of the TD, which require an issuer to make public all the information contained in a notification. There is no provision in the TD to exempt a person from the vote holder notification requirements set out in DTR5.1.2R in respect of such issuers.

5.26 Therefore, we propose deleting this rule and instead relying on revised DTR5.11.4R, which will (together with DTR4.4.8R and DTR6.1.16R) implement the Article 23(1) exemption correctly. We will also make consequential changes to DTR5.1.2R and remove reference to a third country exemption from that obligation. We will also include consequential new provisions in DTR5.5.1AR, DTR5.6.1CR and DTR5.8.12R(3) to make reference to the third country exemption in revised DTR5.11.4R.

Q22: Do you agree with our proposal to delete DTR5.11.6R, to make the consequential change to DTR5.1.2R to remove reference to the Article 23 exemption and to include new provisions in DTR5.5.1AR, DTR5.6.1CR and DTR5.8.12R(3) to make reference to the third country exemption in the revised DTR5.11.4R?

Annex 1
FCA cost benefit analysis

1. When proposing new rules, the FCA is obliged under FSMA to publish a cost benefit analysis (CBA) unless we consider that the proposals will lead to no or minimal increases in costs. The CBA is an estimate of the costs and an analysis of the benefits that will arise from the proposals. It is a statement of the differences between the baseline (broadly speaking, the current position) and the position that will arise if we implement the proposal.

2. The majority of the proposals in this consultation are required to implement fully the TDAD. We do not anticipate these proposals having any significant cost or competition implications.

3. The new TD requirements will apply to all issuers of securities admitted to trading on a regulated market. We also apply DTR5 requirements to issuers of shares admitted to trading on a prescribed market in the UK. Consequently, any changes to this section of the FCA handbook will apply to these issuers. The proposed changes will also affect listed companies and issuers of securitised derivatives who are required by the Listing Rules to comply with DTR4, 5 and 6.

4. The European Commission carried out an impact assessment for the TDAD in 2011 which can be consulted on their website.[10]

5. However, there are certain proposals which do require a CBA. The removal of the client-serving intermediary exemption will have an impact on the existing UK regime. We have provided analysis below. We have also conducted a CBA on the stock lending disclosure proposal and the non-EEA investment manager proposal.

Client-serving intermediary exemption

6. Unlike the existing UK regime, the TD does not provide a standalone, uncapped exemption from the vote holder notification rules for entities operating in a client-serving capacity. Instead, a client-serving intermediary will have to rely on the existing trading book exemption, which is capped at 5%.

7. We anticipate an increase in the amount of notifications received and there will be additional costs to firms acting in this capacity when we remove the standalone exemption from the DTRs. However, these firms will have monitoring systems in place and the cost of making these notifications are expected to be marginal.

8. We appreciate there has been no market failing to lead to the removal of the standalone exemption. However, by maintaining our current position we would be under-implementing the TD and in breach of the RTS.

10 http://ec.europa.eu/finance/securities/transparency/index_en.htm

9. Therefore, removal of the exemption may increase cost but has the benefit of creating a harmonised treatment of entities serving in a client-serving capacity by Member States. It also ensures that the UK implements the TDAD fully.

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

Stock lending and borrowing disclosure

10. The TD requires shareholders to notify issuers of major holdings in shares, and issuers to make these disclosures public. We propose amending our current treatment of the major shareholder notification requirements of the TD so that the same notification obligation applies to both sides of the stock lending transaction (eg borrower and lender).

11. This information will enable investors to acquire or dispose of shares in full knowledge of changes in voting structure, and enhance the overall transparency of stock movement.

12. Based on the pre-existence of monitoring systems, the costs of making these notifications are expected to be marginal. We do not expect shareholders to change their behaviour significantly due to the introduction of these notification requirements.

13. We view this as a beneficial reform for improving market integrity as it corrects the current asymmetric disclosure, which may be having an adverse effect on price formation with some stock lending transactions not being disclosed. Introducing the requirement for both parties to disclose stock lending transactions on the same basis will also have the benefit of harmonising our rules with other Member States and ensuring the UK implements the TD correctly.

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?

Non-EEA Investment Managers

14. The economic rationale for ownership disclosure requirements is mainly to improve market efficiency: an investment firm's decision to become a shareholder in a company can contain price-relevant information – for example, because shareholders can improve the corporate governance of the issuer, or because the acquisition reveals information about the acquirer's expectations of future share prices. Disclosing ownership information can therefore increase the information content of share prices. However, it can be argued that strict disclosure requirements may also reduce the returns that investors can make from acquiring a stake in an issuer, and therefore reduce their incentives to become an active shareholder or acquire information in the first place. Stricter ownership requirements can therefore also have a negative effect on market efficiency by reducing information-gathering and increasing the costs of corporate governance.

15. By amending DTR5.1.5R to allow all investment managers to disclose at 5%, it is reasonable to assume the only type of investment manager our proposals will impact will be non-EEA investment managers (other than US investment managers who have been prescribed by the FCA under DTR5.1.5(1)(d) or DTR5.1.5R(2)(e)). These do not represent a big proportion of significant shareholders in UK issuers when compared with UK, US and other EEA based entities.

16. Setting the threshold at 5% rather than at 3% means fewer transactions will meet the threshold, so lower costs will be imposed on firms. Given that monitoring and reporting systems already exist, the cost savings are not likely to be great, but, at the margin, this helps to mitigate the incremental cost of regulation.

Q26: Do you agree with our analysis of the impact of deleting DTR5.1.5R(1)(d) and amending DTR5.1.5R(2)(e)?

Annex 2
FCA 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, we are required by section 138I FSMA to include an explanation of why we believe the proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B FSMA. We are also required by section 138K(2) FSMA to state our 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

4. The proposals set out in this Consultation Paper are compatible with our 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.

5. In preparing our proposals, we have had regard to the regulatory principles set out in section 3B FSMA. In particular:

The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons

We do not believe that our proposals discriminate against any particular business model or approach.

The principle that we should exercise our functions as transparently as possible

We believe that by consulting on our proposals we are acting in accordance with this principle.

The need to use our resources in the most efficient and economic way

The proposals in this Consultation Paper will have minimal impact on our resources.

The principle that a burden or restriction should be proportionate to the benefits

We believe the proposals in this Consultation Paper are proportionate to the benefits.

The desirability of publishing information relating to persons

We believe that our proposals do not undermine this principle.

Expected effect on mutual societies

6. 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, compared to other authorised persons. The relevant rules we propose to introduce in the DTRs, and the relevant rules we propose to amend, will apply equally to issuers or holders of securities – regardless of whether they are a mutual society or another authorised person.

7. We therefore believe that the impact of our proposals would not significantly differ between mutual societies or other authorised persons.

Equality and diversity

8. 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.

9. 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

HMT 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?

FCA Questions

Q1: Do you agree with the proposal to delete DTR5.3.1R(2), DTR5.3.1R(3), DTR5.3.1R(4) and DTR5.3.1R(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 DTR5.3.1R(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 DTR5.7.1R(4) and reword DTR5.7.1R(3) to reflect the Article 13(1)(a) and (b) text, to clarify DTR5.7.1R(1), and to include new notification requirements in DTR5.3.5R to reflect the Article 13(1) text?

Q5: Do you agree with our proposal to delete DTR5.3.1R(2A) and DTR5.3.1AG? Do you agree with our proposal to delete FCA specific guidance set out in DTR5.3.3G(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 DTR5.3.2R(1) and to remove the link to MiFID in DTR5? Do you agree with our proposal to delete DTR5.8.2R(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 DTR4.1.4R, DTR4.2.2R(2) and DTR4.2.2R(3)?

Q7: Do you agree with the proposal to apply revised DTR4.1.4R and DTR4.2.2R(3) only to reports published on or after the date new rules enter into force?

Q8: Do you agree with our proposal to update DTR6.4.1R and DTR6.4.2R, to include a new DTR6.4.3R and DTR6.4.4R 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 DTR5.1.3R(7)?

Q11: Do you agree with our proposal to amend DTR5.1.3R(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 DTR6.1.2R 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 LR17.5.2R?

Q15: Do you agree with our proposal to delete DTR6.1.11R following the removal of the provision from the TD?

Q16: Do you agree with the consequential and minor changes we propose to DTR5.8.3R and DTR4.4.1R?

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 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?

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 DTR5.1.5R(1)(e)) and our proposal to apply the EU minimum thresholds?

Q20: Do you agree with our proposed deletion of DTR5.1.5R(1)(d) and our proposed amendment to DTR5.1.5R(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 DTR4.4.8R, DTR5.11.4R and DTR6.1.16R to reference the Article 23(1) provision in its entirety and to make consequential amendments to DTR4.4.9G, DTR5.11.5G and DTR6.1.17G?

Q22: Do you agree with our proposal to delete DTR5.11.6R, to make the consequential change to DTR5.1.2R to remove reference to the Article 23 exemption and to include new provisions in DTR5.5.1AR, DTR5.6.1CR and DTR5.8.12R(3) to make reference to the third country exemption in the revised DTR5.11.4R?

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

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 DTR5.1.5R(1)(d) and amending DTR5.1.5R(2)(e)?**

Appendix 1
Draft FCA Handbook text

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 [*date*] 2015.

Amendments to the FCA 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 printed in the paper edition of 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 of the Financial Conduct Authority
[*date*] 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 *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 the *EEA States* where its *securities* are admitted to trading on a *regulated market*. The choice of Home Member State remains valid unless the *issuer* has chosen a new Home Member 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 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. 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 Member State as defined by (a)(ii) or (b) but instead are admitted to trading in one or more other *EEA States*, such new Home Member State as the *issuer* may choose from 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 Member State as defined by (a)(ii) or (b) within a period of three months from the date the *issuers'* 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 *LR*, ~~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, 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, 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,~~ 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* ~~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	…	
	(B)	In the FCA Handbook:
	…	
	(5)	(in *DTR)* has the meaning in article 11 of the *Capital Adequacy Directive*.
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, unless otherwise stated.

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).

(1)	(2)	(3)	(4)
financial instrument	financial instrument	a) *DTR* 5.8.2R(2) b) *DTR* 5.8.2R(3)	a) 1 b) 1
financial instruments	financial instruments	a) *DTR* 5.1.2R b) *DTR* 5.1.2R(1) c) *DTR* 5.1.3R(4)(b) d) *DTR* 5.1.3R(4)(b)(i) e) *DTR* 5.1.3R(4)(b)(iii) f) *DTR* 5.2.3G g) *DTR* 5.3.1R(1) h) *DTR* 5.3.1R(1)(a) i) *DTR* 5.3.1R(1)(b)(ii) j) *DTR* 5.3.2R(1) k) *DTR* 5.3.3G(1) l) *DTR* 5.3.4R m) *DTR* 5.4.5R n) *DTR* 5.7.1R(1) o) *DTR* 5.7.1R(2) p) *DTR* 5.7.1R(3) q) *DTR* 5.8.2R(1) r) *DTR* 5.8.2R(1)(b) s) *DTR* 5.8.2R(4) t) *DTR* 5.8.11R	a) 1 b) 1 c) 2 d) 1 e) 1 f) 1 g) 1 h) 1 i) 1 j) 1 k) 2 l) 2 m) 2 n) 1 o) 1 p) 1 q) 1 r) 1 s) 2 t) 1

Part 2

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

[*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

…

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 ~~and *EEA States'* national central banks.~~:

(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 …

(1) (a) *shares* acquired; or

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

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 to the extent that such *financial instruments* are acquired;

by a *market maker* acting in that capacity subject to the percentage of such *shares*, or *shares* underlying financial instruments, 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) …

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

(i) the shares, or financial instruments, are held within the ~~trading book~~ *trading book* of the *credit institution* or *investment firm*;

(ii) …

(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***]**

…

Aggregation of holdings

5.1.4A EU Commission Delegated Regulation (EU) No[…/…] supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major shareholdings 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 (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 as well as to prevent a misleading picture of how many financial instruments related to an issuer are held by an entity benefiting of these exemptions.

Article 2

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

Aggregation of holdings in the case of a group

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

Recital 3

To provide an adequate level of transparency in the case of a group of companies, the thresholds should be calculated at group level in order to take into account that where a parent undertaking has control over its subsidiaries it may influence their management. 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

For the purpose of calculation of the 5% threshold provided for in Article 9(5) and (6) of Directive 2004/109/EC, holdings shall be aggregated at group level according to the principle laid down in Article 10(e) of said 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:

…

(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]

(e) voting rights attaching to *shares*:

(i) transferred to a *person* under a *stock lending* agreement where the transferor has the right to call for the re-delivery of *shares* that are subject to such *stock lending* agreement; or

(ii) transferred by a *person* under a *stock lending* agreement where the transferor has the right to call for the re-delivery of *shares* that are subject to such *stock*

lending agreement.

(2) For the purposes of *DTR* 5.1.5 R (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*.

…

5.3 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; or

(b) ~~unless (2) or (2A) applies:~~

(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, whether or not they confer a right to a physical settlement.

[**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 that set 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* 5.1.2 R.~~ [deleted]

Client-serving transactions

5.3.1B EU Commission Delegated Regulation (EU) No […/…] supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major shareholdings 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

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.

5.3.1C 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*]

5.3.2 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*,~~ financial instruments 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*~~;

(2) the ~~*instrument*~~ 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;

…

[**Note:** ~~Article~~ article 13(1) 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 pursuant to article 13(1) of the *TD* is published by *ESMA.*

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

5.3.3 G …

(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* 5.3.1 R (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* 5.3.1 R in respect of the position represented by that *financial instrument*.~~ [deleted]

5.3.3A R The number of voting rights shall 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 shall 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 shall aggregate and notify all financial instruments relating to the same underlying *issuer*. Only long positions shall be taken into account for the calculation of voting rights. Long positions shall not be netted with short positions relating to the same underlying *issuer*.

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

Method for calculating the number of voting rights in the case of financial instruments referenced to a basket of shares or an index

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

Recital 4

The disclosure regime for financial instruments having a similar economic effect to shares should be clear. Exhaustive knowledge of the structure of corporate ownership should be proportionate with the need for adequate transparency in major holdings, the administrative burdens such requirements place on holders of voting rights and the flexibility in the composition of a basket of shares or an index. As a result, 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 added between themselves.

Article 4

1. Voting rights in the case of a financial instrument subject to notification requirements laid down in Article 13(1) of Directive 2004/109/EC and which is referenced to a basket of shares or an index shall be calculated on the basis of the weight of the share in the basket or index and if at least one 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; or

   (b) The shares in the basket or index represent 20% or more of the value of the securities in the basket or index.

2. When 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.

Methods for determining delta for the purposes of calculating voting rights relating to financial instruments which provide exclusively for a cash settlement

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

Recital 6

Exclusively cash-settled financial instruments 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 render information about the total number of voting rights accessible to the investor as accurate as possible, delta should be calculated daily taking into account the last closing price of the underlying share.

Article 5

1. The number of voting rights relating to an exclusively cash-settled financial instrument 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 is one that is generally used in the finance industry for that financial instrument and sufficiently robust to consider the elements that are relevant to the valuation of the instrument. Those elements that are relevant to the valuation include at least the following:

   (a) interest rate;

   (b) dividend payments;

   (c) time to maturity;

   (d) volatility; and

   (e) price of underlying share.

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

   (a) the model used covers the complexity and risk of each financial instrument; and

   (b) the same model is used in a consistent manner for the calculation of the number of voting rights of a given financial instrument.

5. IT systems used to run 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 shall notify the issuer when he reaches, exceeds or falls below the thresholds provided for in Article 9(1) of Directive 2004/109/EC.

5.3.4 R …

[**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:

(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:

(i) physical settlement; and

(ii) cash settlement.

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

…

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]

5.7.2 G The effect of *DTR* 5.7.1 R 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.

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

…

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* 5.3.2 R , 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-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* 5.1.2 R 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

…

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 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) …

(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 of Home State

6.4.2 R An *issuer* ~~that chooses the *United Kingdom* as its *Home State*, pursuant to article 2.1(i)(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~~ 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 *issuers' 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	*DTR* 6.4.2R, *DTR* 6.4.3R and *DTR*	R	For an *issuer* whose securities are already admitted to trading on a	From [ ] November 2015	[ ] November 2015

	6.4.4R		*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 shall start on 27 November 2015. 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 shall be exempted from the requirements under *DTR* 6.4.2R and *DTR* 6.4.3R, unless such *issuer* chooses another *Home State* after 27 November 2015.		

Financial Conduct Authority

PUB REF: 005002

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