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QCA Guidance Note – Disclosure and Transparency Rules

Disclosure of significant shareholdings

This note is intended to act as a "ready reckoner" guide, for shareholders and companies, to the requirements for disclosure of significant shareholdings in companies whose securities are traded on UK equity markets, following the implementation of the EU Transparency Directive (TD) into UK law on 20 January 2007.

The disclosures are intended to ensure that investors and issuers can accurately determine the voting structure of an issuer's capital, enhancing transparency of capital movements.

This note, which has been prepared by members of the Legal Committee of the QCA, summarises the requirements, but does not constitute legal (or regulatory) advice. The detailed provisions are quite complex; shareholders and companies should always refer to the relevant Rules themselves. Useful guidance is also set out in List! Issue No. 14 (updated in April 2007) and in FAQs for shareholders, both available on the FSA website at www.fsa.gov.uk.

The UK Companies Act is no longer relevant to the disclosure of significant shareholdings in companies whose securities are traded on regulated or other markets. Sections 198 et seq CA 1985 have been repealed, as responsibility for this area has passed from the DTI (now BERR) to the FSA. Part 43 of CA 2006 contains provisions giving the FSA powers to make transparency rules. The FSA has used these powers to add Transparency Rules to the Disclosure Rules, renamed the Disclosure Rules and Transparency Rules (DTR) – in a new chapter 5 (DTR 5).

The provisions of CA 1985 enabling public companies to investigate interests in their shares (sections 212 et seq CA 1985) have been moved to the CA 2006 (sections 791 et seq).

	Shareholder obligations	Issuer obligations
UK issuer on regulated market – subject to DTR at previous UK thresholds (super-equivalent)	<p>Notify on reaching or passing 3% threshold and each whole percentage point thereafter (4%, 5% and so on) (DTR 5.1.2R)</p> <p>Notify issuer and FSA (DTR 5.1.2R and 5.9.1R) as soon as possible but no later than two trading days after obligation to notify arises (DTR 5.8.3R)</p>	"Make public" as soon as possible on receipt of shareholder notification, but no later than end of next trading day (DTR 5.8.12R(1))
Non-UK issuer on regulated market – subject to DTR at TD	Notify on passing thresholds at 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% (DTR	"Make public" as soon as possible on receipt of notification, and no later than

minimum thresholds	5.1.2R) Notify issuer and FSA (DTR 5.1.2R and 5.9.1R) as soon as possible but no later than four trading days after obligation to notify arises (DTR 5.8.3R)	end of the third trading day following receipt (DTR 5.8.12R(2))
EEA issuer on regulated market	If registered office outside the UK, then not subject to DTR 5, and subject to corresponding requirements of their own separate home member state (DTR 5.1.1R(2) and see para (9) of the FSA Glossary definition of "Home State"). Note that the EEA comprises the EU plus Norway, Iceland and Liechtenstein	
Non-EEA issuer on regulated market	If the UK is the home member state, then must comply with TD minimum requirements, as a "non-UK issuer" as above. The FSA maintains a list of non-EAA issuers for whom the FSA is likely to be the home competent authority. However, non-EEA issuers and their shareholders can be exempted from DTR 5 if the issuer's domestic regime is deemed "equivalent" (DTR 5.11) – (USA, Japan, Israel and Switzerland as at 31 January 2008).	
Note: "regulated market" applies to an EEA regulated market and "EEA issuer" applies to an issuer that has its registered office in an EEA member state "make public" for these issuers means to announce via a RIS (DTR 6.3)		
	Shareholder obligations	Issuer obligations
UK issuer on prescribed market (AIM or PLUS-quoted) – subject to DTR 5 and either AIM Rule 17* (and related guidance notes) or PLUS Rule 28** (and related guidance notes) * AIM Rules for Companies ** PLUS Rules for Issuers	Notify on reaching or passing 3% threshold and each whole percentage point thereafter (4%, 5% and so on) (DTR 5.1.2R) Notify issuer (DTR 5.1.2R) as soon as possible but no later than two trading days after obligation to notify arises (DTR 5.8.3R)	"Make public" as soon as possible on receipt of notification, and no later than end of the third trading day following receipt (DTR 5.8.12R(2)) Notwithstanding DTR 5, issuers must comply with market rules as follows: "Notify" via an RIS "without delay" on receipt of shareholder notification (AIM Rule 17 and guidance) "Announce" via an RIS or Newstrack PLUS "as soon as possible" on receipt of shareholder notification (PLUS Rule 28 and guidance)
Non-UK issuer on prescribed market – not	No shareholder obligation to notify, unless overseas	Use all reasonable endeavours to comply with AIM Rule 17

<p>subject to DTR 5, but AIM Rules and PLUS Rules apply, and overseas regulations may apply</p>	<p>regulations apply, or company's constitutional documents require notification</p>	<p>Such AIM companies should consider adopting provisions in their constitutions similar to the DTR 5 and AIM Rule 17 guidance requirements on shareholder notification of voting rights</p> <p>PLUS Rule 28 will apply, if any notification is received from a shareholder</p>
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Shareholders should also note:

"*Voting rights attached to shares*" are now disclosable, rather than "*interests in shares*". Voting rights may arise from holdings of financial instruments as well as shares. There are eight specified cases where indirect holdings may result in a requirement for a notification to be made to the issuer, where a person may be able to control the exercise of voting rights (DTR 5.2.1R). Appointing a proxy, for example, will (if the holding reaches the relevant threshold) require the shareholder and proxy holder to notify the issuer if, but only if, the appointment includes the power to vote in the discretion of the proxy holder. The chairman of an issuer, appointed as proxy by various shareholders, may have to notify the issuer of the aggregate total proxies he holds where shareholders have not directed how they wish their votes to be cast (DTR 5.8.4R). A proxy which confers only minor and residual discretions (such as to vote on an adjournment) will not result in the proxy holder or shareholder having a notification obligation (DTR 5.8.5G). A proxy which simply directs voting rights to be cast 'for' or 'against' resolutions will not require any notice to the issuer under DTR 5.8.

Voting rights attached to shares are totally disregarded in six cases, that is: (i) shares acquired for clearing and settlement within a three trading day settlement cycle; (ii) shares held by a custodian or bare nominee; (iii) shares held (if less than 10%) by a declared market maker; (iv) shares held (if not more than 5%) by an investment firm or credit institution; (v) shares held as collateral; and (vi) shares acquired by a borrower under a stock lending agreement (DTR 5.1.3R). Some of these cases are subject to conditions.

Voting rights attached to shares are disregarded (except at thresholds of 5%, 10% and above) in four cases, that is: (i) shares held under a management agreement; (ii) shares held by the operator of an authorised unit trust scheme, recognised scheme or UCITS scheme; (iii) voting rights exercisable by an ICVC; and (iv) voting rights exercisable by an FSA prescribed investment entity (DTR 5.1.5R). The FSA can determine that non-EEA investment managers should be subject to the same notification provisions as EEA investment managers (and have the benefit of this disregard rule), if subject to appropriate regulation in the local jurisdiction – and has decided that US investment managers can be treated in this way.

The notification thresholds can be reached or passed on acquisition, disposal or as a result of a change in the number of voting rights announced by a company under DTR 5.6.1R (eg a purchase of shares into treasury, or an issue of new shares) (DTR 5.1.2R).

Shareholders are deemed to have knowledge of the acquisition or disposal of voting rights (and hence time to notify starts to run from) no later than **two** trading days following the transaction in question or, if it was conditional upon an event outside the control of the parties to the transaction, when it becomes unconditional (DTR 5.8.3R).

Shareholders of applicable issuers on regulated markets must notify the issuer and, in electronic format, the FSA on Form TR-1 (available from the FSA web site) (DTR 5.8.10R, 5.9.1R and 5.10.1R). Shareholders of issuers on prescribed markets can, but are not

obliged to, use Form TR-1, but without its annex. If they do not use Form TR-1, they should still include the same information in their notification.

The issuer's announcement can be a copy of the Form TR-1 that it receives but without the annex, or it can be in free-text format.

Issuers should also note:

Whether on a regulated market or a prescribed market, all issuers to which DTR 5 applies must announce their total voting rights (distinguishing those in treasury) at each month end where there has been a change in that month (DTR 5.6.1R). PLUS companies must also announce at the end of each month during which there has been a change the total number of each class of shares, and total amount of issued share capital (PLUS Rule 39 which includes no reference to "treasury shares"). Although there is no express requirement for non-UK issuers on AIM to make month end total voting rights announcements, it would be within the spirit of the AIM Rules if such companies, which had included provisions similar to DTR 5 and AIM Rule 17 in their constitutions, did so, as these announcements are to enable shareholders to assess whether they have to notify.

Issuers must notify the acquisition or disposal of shares in/out of treasury (but not where shares are cancelled on purchase), where the holding of treasury shares reaches or passes the thresholds of 5% or 10%, as soon as possible but no later than **four** trading days after the event (DTR 5.5.1R). Notwithstanding DTR 5, AIM companies must notify any movement (regardless of size) in/out of treasury "without delay" (AIM Rule 17). PLUS companies must announce any re-purchase of shares (regardless of size) "as soon as possible" (PLUS Rule 28). Note the Listing Rules requirement for an Official List company to announce any purchase of its own shares (LR 12.4.6R).

Issuers should bear in mind the disclosure requirements applicable to them apart from under DTR5.

Available on the FSA website:

[List! Issue No. 14 Updated – April 2007](#)

[FAQs for shareholders](#)

[Form TR-1](#)

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