



Major shareholding notifications for Official List and AIM – the essentials

INTRODUCTION

This is an overview of the essentials of this regime for Official List and AIM companies and investors in their shares. These notes focus on Official List and AIM companies incorporated in the UK and not having securities traded elsewhere.

The rules are contained in the FSA's Disclosure Rules and Transparency Rules, chapter 5 (DTR5). They have been effective since 20 January 2007 when they implemented part of the EU Transparency Directive in the UK. We have included links below to the detailed rules and informal guidance notes.

WHAT COMPANIES DO THE RULES APPLY TO?

The rules apply to companies whose shares are admitted to trading on an EEA regulated market and which have chosen the UK as their Home State. This means companies incorporated in the UK and/or whose shares are admitted to the UKLA's Official List.

They also apply to AIM and PLUS companies incorporated in the UK.

WHAT ARE THE RULES CONCERNED WITH?

Essentially, the rules are concerned with the disclosure of holdings of, or of control over the exercise of, voting rights attached to shares in the above types of company.

This is to be distinguished from "interests in shares", which is what the Companies Act 2006 provisions are concerned with (section 793 - notice by public company requiring information about interests in its shares).

The rules use the expression "voting rights held as shareholder" (DTR5.1.2R). The definition of "shareholder" for these purposes in the FSA Handbook Glossary is much wider than the Companies Acts definition, which essentially is confined to the person whose name is entered in the company's register of members as the holder of the shares. The DTR definition would include not only the registered holder of the shares but also their beneficial owner.

While the rules are not clear on this point, we consider that they would extend to parent undertakings, including individuals, disclosing their control over the exercise of voting rights held directly by one of their controlled undertakings (subsidiary undertakings) (DTR5.8.1R(2) and the definitions of "parent undertaking" and "controlled undertaking").



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The rules also apply to voting rights through direct or indirect holdings of “qualifying” financial instruments. These are essentially financial instruments giving the holder the right to acquire existing shares. They do not include options over unissued shares (DTR5.3.1R). These notes focus on holdings in shares, rather than of qualifying financial instruments.

VOTEHOLDER’S NOTIFICATION OBLIGATION

The main rule is that a person (the voteholder) must notify an applicable company as soon as possible but within two trading days if, as a result either of an acquisition or disposal of shares in the company or of changes in the total voting rights attached to the company’s shares, the percentage of voting rights which he holds, or has control over, reaches, exceeds or falls below three per cent and each additional one per cent above (DTR5.1.2R and 5.8.3R).

If, however, the company is an Official List company which is not incorporated in the UK, the disclosure threshold percentages are five, 10, 15, 20, 30, 50 and 75 per cent and the voteholder has four trading days to make the notification.

The voteholder has to notify the amount and nature of his percentage holding. He will usually use the FSA’s standard form (TR-1, available on the UKLA’s website:

<http://www.fsa.gov.uk/pages/doing/ukla/>). An Official List company voteholder must use TR-1 and also file a copy electronically with the FSA (DTR5.8.10R, 5.9.1R and 5.10.1R). An AIM company voteholder may use either TR-1 or a letter and he does not have to notify the FSA.

TR-1 includes an annex, which an AIM company voteholder should ignore. An Official List company voteholder should include the completed annex in the copy TR-1 it sends to the FSA, but he should remove the annex before sending the TR-1 to the Official List company.

Parent undertakings, including individuals, who have control over notifiable percentages of voting rights, should notify the indirect holdings that they have via their controlled undertakings. Such a notification must include details of the chain of controlled undertakings through which the voting rights are effectively held (DTR5.8.1R(2)). However, if a controlled undertaking itself has a notifiable percentage, its obligation to notify ceases if its parent undertaking or another controlled undertaking in the chain has notified (DTR5.8.6R).

There are full or partial exemptions and special rules in relation to particular types of voteholder such as custodians, investment managers and market makers (DTR5.1.3R – 5.1.5R and 5.4).

THE COMPANY’S MAIN DISCLOSURE OBLIGATION

Following receipt of the voteholder’s notification, the company must then disseminate the information to the wider market via a Regulatory Information Service (RIS) (DTR6.3 and AIM Rule 17).

A UK Official List company must do this as soon as possible and in any event by the end of the next trading day. A non-UK Official List company must issue the announcement by the end of the third trading day following receipt (DTR5.8.12R). An AIM company, on the other hand, is



required under the AIM Rules to make the RIS announcement “without delay” notwithstanding the DTRs (AIM Rule 17).

There is no requirement for the form of the company’s announcement. It can just forward the TR-1 it receives to its RIS but, if the company receives a TR-1 with the annex filled in, it should not include that information in its RIS announcement of the notification.

AREN’T THERE EXEMPTIONS FOR NON-EEA OFFICIAL LIST COMPANIES?

Yes. In the case of companies incorporated outside the EEA, the DTRs include provisions enabling those companies and their shareholders not to comply with the DTRs as long as the local laws of that non-EEA company are considered by the FSA to be equivalent.

ARE NON-UK AIM COMPANIES OUTSIDE THIS REGIME?

No. Although the DTRs do not apply to AIM companies that are not incorporated in the UK, the AIM Rules “advise” that, if the local law of a non-UK AIM company does not contain provisions similar to DTR5, those companies should include in their constitutions provisions requiring their shareholders to notify the company in similar terms to DTR5 (AIM Rule 17).

This is an area where the requirements for non-UK AIM companies and their investors are more onerous than for non-UK Official List companies and their investors. The AIM Rules do not provide slightly more relaxed rules in relation to non-UK Official List companies as the DTRs do.

WHAT OTHER ANNOUNCEMENTS DO AFFECTED COMPANIES HAVE TO MAKE?

At the end of each calendar month (or on the Friday before if the month end falls on a weekend) the company must make a RIS announcement of the total number of voting rights and capital in respect of each class of its traded shares, distinguishing any treasury shares. This announcement would have the headline “Total Voting Rights”. The company does not have to make a month end announcement if there has been no increase or decrease in the figures during that month (DTR5.6).

A voteholder must obtain the denominator for calculating his percentage holding for the purpose of his notification from the company’s latest Total Voting Rights announcement (DTR5.8.8R).

A company will also have to make a RIS announcement as soon as possible but not later than four trading days following its acquisition or disposal of its own shares, if the percentage of the voting rights attributable to those shares that it holds in treasury reaches, exceeds or falls below five or 10 per cent (DTR5.5).

DOES THE COMPANY HAVE TO POST THESE ANNOUNCEMENTS ON ITS WEBSITE?

If the Official List company has a website, it should, simultaneously or subsequently but not beforehand, post the announcement on its website by the close of the next business day and leave it there for at least one year following publication. This is because such announcements would usually come under the DTRs in relation to the disclosure of inside information (DTR 2.3).



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AIM companies are required to have websites on which they must, among other things, post all announcements the company has made in the past 12 months (AIM Rule 17, although AIM companies have until 20 August 2007 to comply with this rule).

WHAT ABOUT PROXIES?

A person must notify the company if he has been appointed as a proxy in relation to a notifiable percentage of voting rights and has been given discretion as to how to vote on any of the resolutions set out in the notice of the meeting. This is because he is treated as having acquired those rights. He will be treated as having disposed of them on the expiry of the proxy (DTR5.2.1R(h)).

This may be relevant to a chairman of a meeting appointed as proxy by a sufficient number of shareholders who have not indicated on the proxy form which way they wish their votes to be cast. However, in this case, the chairman does not need to notify until the deadline for receiving proxies has been reached or as soon as reasonably practicable after that. Although he is treated as having made an acquisition which will be followed by a disposal, he will only need to make one notification if the proxy is for a single meeting, as long as he makes it clear in the notification that his voting rights cease on the expiry of the proxy at the end of the meeting or any adjourned meeting (DTR5.8.4R(2) and (3) and 5.8.5G).

A shareholder, who has a notifiable percentage of voting rights and appoints another as his proxy with discretion as to how to vote on the resolutions set out in the notice of meeting, will also need to notify, as he is treated as having disposed of a notifiable percentage of voting rights. His notification can be included with the proxy holder's and, again, only one notification will be necessary if it is for a single meeting and the notification makes it clear that the voting rights revert to the shareholder afterwards (DTR5.1.2R, DTR5.8.4R(4) and 5.8.5G).

WHAT ABOUT CONCERT PARTIES?

If two or more persons have concluded an agreement that obliges them all to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the company, each of those persons is treated as also holding the voting rights held either initially or subsequently by the others and has an obligation to notify if the aggregate of all of their percentage holdings is notifiable (DTR5.2.1R(a)).

This type of concert party is narrower than the Takeover Code concept, as there has to be an agreement for "a lasting common policy towards the management of the company".

WHAT ARE THE SANCTIONS FOR BREACH OF DTR5?

The FSA may impose a penalty on, or publicly censure, any person (such as a voteholder or the company) it considers has contravened any provision of DTR5 or any of that person's directors who it considers was knowingly concerned with the breach (section 91 Financial Services and Markets Act 2000 (FSMA)).



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It also has power to require any of those persons to supply it with information or documents in connection with any provision of DTR5 (section 89H FSMA).

If it has reasonable grounds for suspecting that one of the provision of DTR5 has been infringed in relation to an Official List company, the FSA has power to suspend or prohibit trading in the Official List company's shares (section 89L FSMA).

A breach of DTR5 could also fall within one or more of the other more general market abuse headings and could result in further sanctions for such behaviour.

SOURCES AND USEFUL LINKS

- FSA's major shareholdings notification form (TR-1). This includes detailed notes as to how to complete it:
http://www.fsa.gov.uk/pubs/forms/LR_share_interests.doc
- FSA's Disclosure Rules and Transparency Rules, chapter 5 (DTR5):
<http://fsahandbook.info/FSA/html/handbook/DTR/5>
- The UKLA's special List! newsletter Issue No. 14 Updated - April 2007. This includes informal guidance on DTR5:
http://www.fsa.gov.uk/pubs/ukla/list14_apr07.pdf
- The London Stock Exchange's AIM Rules for Companies. See in particular the guidance notes to Rule 17:
http://www.londonstockexchange.com/NR/ronlyres/91B19E7D-550C-440A-BCCA-52A32F1913DB/0/AIMRULESFORCOMPANIES_2007.pdf



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