

**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 26 November 2015.

Amendments to the 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 reproduced in 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
5 November 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~~ 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 among the *EEA States* where its securities are admitted to trading on a regulated market; the choice of *Home State* shall remain valid unless the *issuer* has chosen a new *Home 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~~ 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~~ *Home 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 State* as

defined by (a)(ii) or (b) but instead are admitted to trading in one or more other EEA States, such new Home State as the issuer may choose from among 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 State as defined by (a)(ii) or (b) within a period of three months from the date that the issuer's 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 LR₂ 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 by the depository receipt, 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 by the depository receipt, 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~~, *person* 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~~ *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

...

- (5) (in *DTR*) has the meaning in article 4.1(86) of *EU CRR*.

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.

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). Note that references contained in text to be deleted are not included in the occurrence references indicated in column (3) or in the occurrence count in column (4).

(1)	(2)	(3)	(4)
<i>financial instrument</i>	financial instrument	<i>DTR 5.8.2R(2)</i> <i>DTR 5.8.2R(3)</i>	1 1
<i>financial instruments</i>	financial instruments	<i>DTR 5.1.2R</i> <i>DTR 5.1.2R(1)</i> <i>DTR 5.1.3R(4)(b)</i> <i>DTR 5.1.3R(4)(b)(i)</i> <i>DTR 5.1.3R(4)(b)(iii)</i> <i>DTR 5.2.3G</i> <i>DTR 5.3.1R(1)</i> <i>DTR 5.3.3G(1)</i> <i>DTR 5.3.4R</i> <i>DTR 5.4.5R</i> <i>DTR 5.7.1R(1)</i> <i>DTR 5.7.1R(2)</i> <i>DTR 5.7.1R(3)</i> <i>DTR 5.8.2R(1)</i> <i>DTR 5.8.2R(1)(b)</i> <i>DTR 5.8.11R</i>	1 1 2 1 1 1 1 2 2 1 1 1 1 1 1 1 1

Part 2

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

[*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

...

Publication of 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:

(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 Voting rights attaching to the following *shares* 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:

- (1) (a) *shares* acquired; or
 (b) *shares* underlying financial instruments within DTR 5.3.1R(1) 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(1) to the extent that such financial instruments are held;

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(1) to the extent that such financial instruments are

held;

by a *market maker* acting in that capacity subject to the percentage of such *shares* 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) ...

(b) *shares* underlying financial instruments within *DTR 5.3.1R(1)* to the extent that such financial instruments are held;

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

(i) ...

...

(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*]

5.1.4 R ...

(2) A *market maker* relying upon the exemption for *shares* or financial instruments within *DTR 5.3.1R(1)* held by it in that capacity must notify the *competent authority* of the *Home Member State* of the *issuer*, at the latest within the time limit provided for by *DTR 5.8.3R*, that it conducts or intends to conduct market making activities on a

particular *issuer* (and shall equally make such a notification if it ceases such activity).

[**Note:** article 6(1) of the *TD implementing Directive*]

...

Aggregation of holdings

- 5.1.4A EU Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings 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 (that is 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 and to prevent a misleading representation of how many financial instruments related to an issuer are held by an entity benefiting from those exemptions.

Article 2

Aggregation of holdings

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

Aggregation of holdings in the case of a group

- 5.1.4B EU Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings provides that:

Recital 3

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

Aggregation of holdings in the case of a group

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

...

- (c) voting rights attaching to *shares* which may be exercisable by an *ICVC*;

- (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]~~

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

5.2 Acquisition or disposal of major proportions of voting rights

...

- 5.2.3 G A *person* falling within Cases (a) to (h) is an indirect holder of *shares* for the purpose of the definition of *shareholder*. These indirect holdings have to be aggregated, but also separately identified in a notification to the *issuer*. Apart from those identified in the Cases (a) to (h), the *FCA* does not expect any other significant category "indirect shareholder" to be identified. Cases (a) to (h) are also relevant in determining whether a *person* is an indirect holder of ~~qualifying~~ financial instruments within *DTR 5.3.1R*(1)(a) which result in an entitlement to acquire *shares*.

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* on maturity give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to the holder's right to acquire, shares to which voting rights are attached, already issued, of an issuer; or~~
- (b) ~~unless (2) or (2A) applies: are not included in (a) but which are referenced to shares referred to in (a) and with economic effect similar to that of the financial instruments referred to in (a), whether or not they confer a right to a physical settlement.~~
 - (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*.~~

[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 set that 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 5.1.2R. [deleted]~~

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, 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; [deleted]~~
- (2) ~~the 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; [deleted]~~

...

~~[Note: Article 13(1) article 2(1)(q) 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 according to article 13(1b) of the TD is published by ESMA.

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

5.3.2B EU Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings 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

Client-serving transactions

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.

5.3.2C 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]

5.3.3 G (1) For the purposes of DTR 5.3.1R (1)(a) and to give effect to Directive 2004/109/EC (TD), ~~qualifying~~ financial instruments within DTR 5.3.1R(1)(a) should be taken into account in the context of notifying major holdings, to the extent that such instruments give the holder an unconditional right to acquire the underlying shares or cash on maturity. Consequently, ~~qualifying~~ financial instruments within DTR 5.3.1R(1)(a) should not be considered to include instruments entitling the holder to receive shares depending on the price of the underlying share reaching a certain level at a certain moment in time. Nor should they be considered to cover those instruments that allow the instrument issuer or a third party to give shares or cash to the instrument holder on maturity.

[Note: Recital 13 of the TD implementing Directive]

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

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

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

5.3.3B EU Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings provides that:

Recital 4

The disclosure regime for financial instruments that have a similar economic effect to shares should be clear. Requirements to provide exhaustive details of the structure of corporate ownership should be proportionate to the need for adequate transparency in major holdings, the administrative burdens those requirements place on holders of voting rights and the flexibility in the composition of a basket of shares or an index. Therefore, 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 accumulated.

Article 4

Financial instruments referenced to a basket of shares or an index

1. Voting rights referred to in Article 13(1a)(a) of Directive 2004/109/EC in the case of a financial instrument referenced to a basket of shares or an index shall be calculated on the basis of the weight of the share in the basket of shares or index where any 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;
 - (b) the shares in the basket or index represent 20% or more of the value of the securities in the basket or index.
2. Where 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.

5.3.3C EU Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings provides that:

Recital 6

Financial instruments which provide exclusively for a cash settlement 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 ensure that information about the total number of voting rights accessible to the investor is as accurate as possible, delta should be calculated daily taking into account the last closing price of the underlying share.

Article 5

Financial instruments providing exclusively for a cash settlement

- 1. The number of voting rights referred to in Article 13(1a)(b) of Directive 2004/109/EC relating to financial instruments which provide exclusively for a cash settlement, 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 shall be a model that is

generally used in the finance industry for that financial instrument and that is sufficiently robust to take into account the elements that are relevant to the valuation of the instrument. The elements that are relevant to the valuation shall include at least all of the following:

- (a) interest rate;
- (b) dividend payments;
- (c) time to maturity;
- (d) volatility;
- (e) price of underlying share.

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

- (a) that the model used covers the complexity and risk of each financial instrument;
- (b) that the same model is used in a consistent manner for the calculation of the number of voting rights of a given financial instrument.

5. Information technology systems used to carry out 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 of the financial instrument shall notify the issuer when that holder reaches, exceeds or falls below the thresholds provided for in Article 9(1) of Directive 2004/109/EC.

5.3.4 R The holder of ~~qualifying~~ financial instruments within DTR 5.3.1R(1)(a), and, to the extent relevant, financial instruments with similar economic effects within DTR 5.3.1R(1)(b), is required to aggregate and, if necessary, notify all such instruments as relate to the same underlying issuer.

[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, if their holding includes financial instruments within DTR 5.3.1R(1):

- (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:

(a) physical settlement; and

(b) cash settlement.

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

5.4 Aggregation of managed holdings

...

5.4.5 R Where the *parent undertaking* intends to benefit from the exemptions only in relation to the financial instruments referred to in Article 13 of the *TD*, it shall ~~(in relation to *financial instruments* giving an entitlement to acquire *shares* which are admitted to trading on a *regulated market*)~~ must notify to the *FCA* only the list referred to in paragraph (1) of *DTR* 5.4.4R.

[Note: article 10(3) of the TD implementing Directive]

...

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]

5.7.1A R Voting rights relating to financial instruments within DTR 5.3.1R(1) that have already been notified in accordance with DTR 5.1.2R must be notified again when the *person* has acquired the underlying *shares* and such acquisition results in the total number of voting rights attached to *shares* issued by the same *issuer* reaching or exceeding the thresholds laid down by DTR 5.1.2R.

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

5.7.2 G The effect of DTR 5.7.1R 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.

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 5.3.2R, 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-~~ 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 5.1.2R* 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

...

6.1 Information requirements for issuers of shares and debt securities

...

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 Disclosure 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) an *issuer* whose *Home State* is the *United Kingdom* in accordance with the first indent of article 2.1(i)(i) of the TD; and
 - (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 Disclosure of Home State~~

- 6.4.2 R ~~An issuer that chooses the *United Kingdom* as its *Home State*, pursuant to article 2.1(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 *issuer's 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	<u>DTR 6.4.2R, DTR 6.4.3R and DTR 6.4.4R</u>	<u>R</u>	<p><u>For an issuer whose securities are already admitted to trading on a 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 will start on 27 November 2015.</u></p> <p><u>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 is exempted from the requirements under DTR 6.4.2R and DTR 6.4.3R, unless such an issuer chooses another Home State after 27 November 2015.</u></p>	<u>From 26 November 2015</u>	<u>26 November 2015</u>

