

Filters applied:

Legal act = Transparency Directive (TD) Directive 2004/109/EC

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ESMA_QA_2062	03-01-2024
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ESMA_QA_1886	01-04-2022
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Title	Submission Date
ESMA_QA_2032	23-10-2015
ESMA_QA_2031	25-02-2011
ESMA_QA_2030	27-10-2009
ESMA_QA_2029	27-10-2009
ESMA_QA_2028	30-04-2009

ESMA_QA_2062

Submission Date

03/01/2024

Status: Question Rejected

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Notifications of major shareholdings

Additional Legal Reference

ESMA Indicative list of financial instruments that are subject to notification requirements according to Article 13(1b) of the revised Transparency Directive

Subject Matter

Clarification on the application of the Transparency Directive, particularly Article 13, 1b, and its subsequent sub-points, in the context of synthetic shares

Question

Article 13 1. (b) states that Financial instruments 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 are subject to the notification requirement of Article 9 in the TD. The definition of "Financial Instrument" is further elaborated in Article 13, 1b, and its subsequent sub-points, and includes the wording "any other contracts or agreements with similar economic effects which may be settled physically or in cash.". ESMA has also produced an Indicative List of

Given this context, my question is: Do synthetic shares, which are created through various derivatives and structured financial processes to mimic the performance of actual shares without conferring ownership, fall under the scope of "financial instruments" as defined in Article 13(1)(b) of the Transparency Directive? Specifically, do synthetic shares qualify as "contracts or agreements with similar economic effects" that are subject to notification requirements pursuant to this paragraph?

ESMA_QA_2043

Submission Date

30/11/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Notifications of major shareholdings

Historic Question Reference

[ESMA31-67-127 TD Q27]

Subject Matter

Notification of Major Holdings; TD Art. 9(1)

Question

Does the major shareholder obligation in Article 9(1) of Transparency Directive 2004/109/EC apply to holdings in issuers whose shares are not admitted to trading on an EU regulated market if depository receipts (DRs) in respect of that issuer's shares are admitted to trading on an EU regulated market?

- Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation -

ESMA Answer

30-11-2023

Original language

[ESMA31-67-127 TD Q27]

Article 9(1) of the Transparency Directive 2004/109/EC^[1] (TD) requires Member States to ensure that all shareholders, following the acquisition or disposal of shares of an issuer of shares admitted to trading on an EU regulated market, in the sense of Article 4(1), point 21, of Directive 2014/65/EU, and to which voting rights are attached, inform the issuer of the resulting proportion of voting rights they hold where that proportion reaches certain thresholds.

Considering that:

1. pursuant to Article 2(1)(e) TD^[2], persons that hold depository receipts are considered as “shareholders” of an issuer when they hold underlying shares represented by the depository receipts; and that
2. pursuant to Article 2(1)(d) TD^[3], “issuers” encompass issuers of the securities represented by the depository receipts, whether or not these securities are

admitted to trading on an EU regulated market,

the holders of a depository receipt listed on an EU regulated market are subject to the provisions set out in Article 9(1) TD, including when the underlying shares of an issuer are not admitted to trading on an EU regulated market.

[1] Article 9(1) TD - Notification of the acquisition or disposal of major holdings - 1. *The home Member State shall ensure that, where a shareholder acquires or disposes of shares of an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached, such shareholder notifies the issuer of the proportion of voting rights of the issuer held by the shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 50 % and 75 %. [...].*

[2] Article 2(1)(e) TD: *“shareholder means any natural person or legal entity governed by private or public law, who holds, directly or indirectly: (i) shares of the issuer in its own name and on its own account; (ii) shares of the issuer in its own name, but on behalf of another natural person or legal entity; (iii) 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”.*

[3] Article 2(1)(d) TD: *“‘issuer’ means 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. 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”.*

ESMA_QA_593

Submission Date

02/09/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Transparency

Subject Matter

Trading book exemption

Question

Is it possible for third country credit institutions and investment firms to apply the trading book exemption set out in Article 9(6) of the Transparency Directive 2004/109/EC (TD) or is the application of this exemption limited only to EU credit

institutions and investment firms?

ESMA Answer

18-12-2023

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Only credit institutions and investment firms, the trading book of which is regulated pursuant to Union law, may apply the trading book exemption provided by Article 9(6) of Directive 2004/109/EC.

Article 9(6) of Directive 2004/109/EC ('TD') states that shareholders that are credit institutions or investment firms shall have no obligation to notify the issuer about the proportion of voting rights held on the basis of shares in their trading book provided that:

- a. the voting rights held in the trading book do not exceed 5 %; and
- b. the voting rights attached to shares held in the trading book are not exercised or otherwise used to intervene in the management of the issuer.

With respect to the term 'trading book', Article 9(6) refers to Article 11 of Directive 2006/49/EC, which has meanwhile been repealed. Therefore, that reference is to be read as reference to the respective definitions in Article 4(1), point (86), of Regulation (EU) No 575/2013, and in Article 4(1), point (54), of Regulation (EU)

2019/2033.

These definitions define 'trading books' with regard to the positions held by credit institutions, as regulated under Regulation (EU) 575/2013 and by investment firms as regulated under Regulation (EU) 2019/2033. In addition, according to Recital 20 TD, the Member States should be allowed to provide limited exemptions as regards holdings of shares in trading books of credit institutions and investment firms.

These definitions and provisions in those acts about the trading book lay down the appropriate scope of application of the exemption in Article 9(6) TD. As a result, credit institutions or investment firms referred to in Article 9(6) TD should be construed as those the trading book of which is subject to Union rules on the trading book.

Third country credit institutions or investment firms are, in principle, not subject to Union law as regards their trading book. As such, the scope of application of Article 9(6) does not extend to those third country credit institutions or investment firms, nor is Article 9(6) covered by any equivalence provision in Union Law.

"Disclaimer: *The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts."*

ESMA_QA_1886

Submission Date

01/04/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q20]

Subject Matter

Labels used by issuers on ESG financial measures; Paragraphs 3, 4, 8, 17, 22, 33 of the APM Guidelines.

Question

How do the APM Guidelines principles regarding labels apply to ESG financial measures (e.g., green turnover, sustainable CAPEX)?

ESMA Answer

01-04-2022

Original language

[ESMA32-51-370 APM Q20]

ESMA reminds issuers that financial measures using ESG labels may fall under the scope of the APM Guidelines. Therefore, in order to assess whether this is case, issuers should consult the guidance included in Question ESMA_QA_1885 (historic reference *ESMA32-51-370 APM Q19*) of the Q&A of the APM Guidelines.

As regards the labels of such measures, ESMA calls on issuers to use caution when they present APMs using ESG labels as these may be misperceived by users as compliant with the Taxonomy Regulation or SFDR. In order to ensure that APMs using ESG labels (i) *provide* a fair review of the development and performance of the business and of the position of the issuer as prescribed in Articles 4 and 5 of the Transparency Directive, (ii) *do not provide* a misleading depiction of the performance of the issuer in accordance with Article 12 of the Markets Abuse Regulation and (iii) *comply* with paragraph 22 of the APM Guidelines issuers should be clear about whether a specific ESG financial measure is determined in

accordance with the Taxonomy Regulation or SFDR. To this end, ESMA recommends that issuers use one or both of the following methods:

a. To display in the label whether the measure is determined in accordance with the Taxonomy Regulation, SFDR (e.g., Non-Taxonomy Turnover or Non-SFDR indicators for principal adverse impacts)

and / or

b. To include information together with the APM used (e.g., footnote) as to whether the APM is calculated in accordance with the Taxonomy Regulation or with the indicators for principal adverse impact in SFDR.

Issuers are reminded to include div on the use of each specific APM using an ESG label in the explanations disclosed to allow users to understand its usefulness, relevance and reliability.

Finally, issuers are also invited to consider the Platform for Sustainable Finance considerations on voluntary information as part of Taxonomy eligibility reporting.^[1]

[1]

https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/sustainable-finance-taxonomy-eligibility-reporting-voluntary-information_en.pdf.

ESMA_QA_1885

Submission Date

01/04/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q19]

Subject Matter

Application of the APM Guidelines to measures related to ESG matters; Paragraphs 3, 4, 17, 21, 22, 26, 33, 35, 37 and 41 of the APM Guidelines.

Question

Do the APM Guidelines apply to financial measures related to ESG matters (e.g., green turnover, sustainable CAPEX)?

ESMA Answer

01-04-2022

Original language

[ESMA32-51-370 APM Q19]

According to paragraph 3 of the APM Guidelines, the Guidelines apply in relation to APMs disclosed by issuers or persons responsible for the prospectus when publishing regulated information and prospectuses (and supplements to prospectuses). Examples of regulated information are management reports disclosed to the market in accordance with the Transparency Directive and disclosures issued under the requirements of Article 17 of the Market Abuse Regulation, for example ad-hoc disclosures including financial earnings results.

Furthermore, paragraph 4 clarifies that the APM Guidelines do not apply to APMs disclosed in accordance with applicable legislation, other than the applicable financial reporting framework, that sets out specific requirements governing the determination of such measures.

Paragraph 17 of the APM Guidelines defines an APM as a financial measure of historical or future financial performance, financial position or cash flows, other than

a financial measure defined or specified in the applicable financial reporting framework.

Based on the above principles included in the APM Guidelines, when financial measures using ESG labels (such as green turnover, sustainable CAPEX) are included in regulated information and prospectuses, those measures are covered by the APM Guidelines. The exception is if such measures are determined in accordance with, for example, the Taxonomy Regulation or the SFDR. In this respect, ESMA highlights that, where applicable, issuers should apply the APM Guidelines to measures included in the EC Guidelines on non-financial reporting: Supplement on reporting climate-related information.[1]

Therefore, where issuers include financial measures using ESG labels in regulated information or in prospectuses, and those measures are not determined in accordance with applicable legislation, issuers should comply with the principles included in the APM guidelines with regards to:

- definitions (paragraph 20 and 21),
- labels (paragraphs 22 to 25),[2]
- reconciliations (paragraph 26 to 32),
- explanations (paragraphs 33 and 34),
- prominence (paragraphs 35 and 36),
- comparatives (paragraphs 37 to 40) and
- consistency (paragraphs 41 to 44).

Given the connection between the APMs related to ESG measures and disclosures required by the Taxonomy Regulation and the SFDR, in addition to the reconciliations required under paragraphs 26 to 32 of the APM Guidelines, where relevant, ESMA encourages issuers to provide reconciliations between APMs related to ESG measures and KPIs or measures required by the Taxonomy Regulation and the SFDR.

[1] Communication from the Commission — Guidelines on non-financial reporting: Supplement on reporting climate-related information (europa.eu)

[2] Please refer to Question ESMA_QA_1886 (historic reference *ESMA32-51-370 APM Q20*)

ESMA_QA_1884

Submission Date

01/04/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q18]

Subject Matter

Application of the APM Guidelines in the context of COVID-19; Paragraphs 8, 17-19, 33, 34, 41 and 43 of the APM Guidelines.

Question

How should an issuer present the impact of COVID-19 for the purpose of the APM Guidelines?

ESMA Answer

01-04-2022

Original language

[ESMA32-51-370 APM Q18]

ESMA acknowledges that, due to the impacts of the COVID-19 pandemic on their operations, issuers may decide to disclose new, or to adjust, alternative performance measures in ad-hoc disclosures published in accordance with Article 17 of MAR, in management reports or additional periodic financial information published in accordance with articles 3(1a), 4 and 5 of the Transparency Directive or in prospectuses published in accordance with Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017.

ESMA reminds issuers that, according to paragraph 41 of the APM Guidelines, the definition and calculation of an APM should be consistent over time. Therefore, ESMA recommends that issuers use caution when making adjustments to APMs used and/or when including new APMs solely with the objective of depicting the impacts that COVID-19 may have on their performance and cash-flows. ESMA notes that, when disclosing APMs, issuers should ensure that these measures

provide a fair review of the development and performance of the business and of the position of the issuer as prescribed in Articles 4 and 5 of the Transparency Directive and do not provide an incorrect depiction of the performance of the issuer which would give a misleading signal on the price of the corresponding financial instruments, as provided for in Article 12 of MAR.

In addition, ESMA reminds issuers that, before making adjustments to previously used APMs or including new APMs, issuers should carefully assess whether the intended adjustments or new APMs would provide transparent and useful information to the market, improve comparability, reliability and/or comprehensibility of APMs and of the financial information disclosed to the market.

In this respect, ESMA observes that it may not be appropriate to include new APMs or to adjust previously used APMs when the impacts of COVID-19 have a pervasive effect on the overall financial performance, position, and/or cash flows of an issuer as these new or adjusted APMs may not provide reliable and more useful information to the market and may mislead users' understanding of the true and fair view of issuer's assets, liabilities, financial position and profit or loss.^[1]

Therefore, rather than adjusting existing APMs or including new APMs, ESMA urges issuers to improve their disclosures and include narrative information in their communication documents^[2] in order to explain how COVID-19 impacted and/or is expected to impact their operations and performance, the level of uncertainty and the measures adopted or expected to be adopted to address the COVID-19 outbreak. These explanations may include, where applicable, div on how the specific circumstances related to COVID-19 affected the assumptions and estimates used in the determination of inputs to APMs, for example impairment losses, expected lease payment reductions or grants received.

ESMA reminds issuers that the APM Guidelines apply to all financial measures not defined or specified in the applicable financial reporting framework including liquidity and cash-flow measures (paragraph 17 to 19 of the APM Guidelines). In this respect, ESMA reminds issuers that the APM Guidelines as well as this Q&A also

apply to APMs presented simultaneously inside and outside financial statements.[3] APMs should not be displayed with more prominence than measures directly stemming from financial statements.[4]

Finally, ESMA also reminds issuers of the requirements in paragraphs 33, 34, 41 and 43 of the ESMA Guidelines on APMs regarding explanations of why they believe that an APM provides useful, reliable and relevant information regarding the financial position, cash flows or financial performance, as well as the purposes for which they decided to use a specific APM and/or to modify a previously used APM.

[1] Paragraph 8 of the APM Guidelines.

[2] Ad-hoc disclosures published in accordance with Article 17 of MAR, additional periodic information and management reports published in accordance with Article 3 (1a), 4 and 5 of TD and prospectuses published in accordance with Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017.

[3] Please refer to Question ESMA_QA_1868 (historic reference *ESMA32-51-370 APM Q2*) of the Questions and answers ESMA Guidelines on Alternative Performance Measures.

[4] Paragraphs 35 and 36 of the APM Guidelines.

ESMA_QA_476

Submission Date

21/03/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Notifications of major shareholdings

Subject Matter

The scope of the major shareholder obligation in Article 9.1 of the Transparency Directive

Question

Does the major shareholder obligation in Article 9(1) of the Transparency Directive apply to holdings in issuers whose shares are not admitted to trading on an EU

regulated market if depository receipts (DRs) in respect of that issuer's shares are admitted to trading on an EU regulated market?

Legislative background:

We note that one of the amendments to Directive 2004/109/EC (the Transparency Directive) by Directive 2013/50/EU (the Amending Directive) relates to the definition of "issuer". Recital 18 of the Amending Directive states: "In order to clarify the treatment of non-listed securities represented by depository receipts admitted to trading on a regulated market and in order to avoid transparency gaps, the definition of 'issuer' should be further specified to include issuers of non-listed securities represented by depository receipts admitted to trading on a regulated market". Accordingly, the Amending Directive revised the definition of "issuer" in Article 2(1)(d) of the Transparency Directive as follows: "'issuer' means 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. 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."

However, Article 9(1) of the Transparency Directive specifically describes the major shareholder notification obligation as applying in respect of "an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached." Therefore, if an issuer has shares admitted to trading on a regulated market, the major shareholder notification rules apply to holdings in that issuer. For completeness, we note that the definition of "shareholder" in Article 2(1)(e) of the Transparency Directive makes it clear that a holder of DRs is treated as a holder of the underlying shares represented by the DRs.

Question for clarification:

Whilst the general definition of "issuer" in Article 2(1)(d) of the Transparency Directive includes issuers of non-listed securities represented by DRs admitted to trading on a regulated market, the scope of Article 9(1) is limited to issuers with shares admitted to trading on a regulated market. As a DR is not itself a share, the fact that a DR may be admitted to trading on an EU regulated market does not, in itself, bring the issuer of the underlying shares represented by the DRs within the scope of Article 9(1) of the Transparency Directive. Our reading of Article 9(1) is that the major shareholder notification rules are not intended to apply to holdings in an issuer whose shares are not admitted to trading on a regulated market, even if DRs in respect of that issuer's shares are admitted to trading on a regulated market. Please could you confirm this understanding?

ESMA Answer

24-10-2023

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Article 9(1) of the Transparency Directive 2004/109/EC¹ (TD) requires Member States to ensure that all shareholders, following the acquisition or disposal of shares of an issuer of shares admitted to trading on an EU regulated market, in the sense of Article 4(1), point 21, of Directive 2014/65/EU, and to which voting rights are attached, inform the issuer of the resulting proportion of voting rights they hold where that proportion reaches certain thresholds.

Considering that:

1. pursuant to Article 2(1)(e) TD², persons that hold depository receipts are considered as “shareholders” of an issuer when they hold underlying shares represented by the depository receipts; and that
2. pursuant to Article 2(1)(d) TD³, “issuers” encompass issuers of the securities represented by the depository receipts, whether or not these securities are admitted to trading on an EU regulated market,

the holders of a depository receipt listed on an EU regulated market are subject to the provisions set out in Article 9(1) TD, including when the underlying shares of an issuer are not admitted to trading on an EU regulated market.

"Disclaimer: *The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from*

such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts."

1 Article 9(1) TD - Notification of the acquisition or disposal of major holdings - 1. The home Member State shall ensure that, where a shareholder acquires or disposes of shares of an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached, such shareholder notifies the issuer of the proportion of voting rights of the issuer held by the shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 50 % and 75 %. [...].

2 Article 2(1)(e) TD: "shareholder means any natural person or legal entity governed by private or public law, who holds, directly or indirectly: (i) shares of the issuer in its own name and on its own account; (ii) shares of the issuer in its own name, but on behalf of another natural person or legal entity; (iii) 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".

3 Article 2(1)(d) TD: "'issuer' means 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. 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".

ESMA_QA_2042

Submission Date

09/11/2020

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Transparency

Historic Question Reference

[ESMA31-67-127 TD Q26]

Subject Matter

Choice of TD home Member State* after the end of the UK's transition period for leaving the EU

Question

* At the end of the UK's transition period for leaving the EU, the choice of a home Member State under the Transparency Directive will consist of the EU27 Member States and the three EEA EFTA States Iceland, Liechtenstein and Norway.

After the end of the UK's transition period for leaving the EU (1 January 2021), under the Transparency Directive (TD) which obligations does an issuer which currently has the UK as its home Member State and is admitted to trading on one or more regulated markets in EU27 / EEA EFTA have in relation to disclosing its choice of a new home Member State?

ESMA Answer

09-11-2020

Original language

[ESMA31-67-127 TD Q26]

After the end of the UK's transition period for leaving the EU, an issuer which currently has the UK as its TD home Member State and is admitted to trading on one or several regulated markets in EU27 / EEA EFTA, must determine its TD home Member State according to the rules laid down in TD Article 2(1)(i). The issuer is required to disclose its new home Member State in accordance with TD Articles 20 and 21 and additionally to disclose its home Member State to:

- the competent authority of the Member State where it has its registered office, where applicable;
- the competent authority of the home Member State; and
- the competent authorities of all host Member States.

To facilitate a timely transfer of supervisory tasks from the UK to the new home Member State, ESMA considers that it would be beneficial if issuers would choose and disclose their new home Member State under the TD without delay after the end of the UK's transition period. In case the issuer does not disclose its new home Member State within a period of three months after the end of the transition period, i.e. by 31 March 2021, based on TD Article 2(1)(i)(iii), third paragraph, ESMA is of the view that the Member State where the issuer's securities are admitted to trading on a regulated market should be considered its home Member State. Where the issuer's securities are admitted to trading on regulated markets situated or operating within more than one Member State, ESMA is of the view that those Member States should be considered the issuer's home Member States until a subsequent choice of a single home Member State has been made and disclosed by the issuer.

ESMA_QA_1883

Submission Date

30/10/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q17]

Subject Matter

Application of the Fair review principle to APMs; Paragraphs 6, 8 and 22 of the APM Guidelines.

Question

May APMs representing a biased measure of performance (i.e. a measure that includes one-off gains but disregards one-off related losses) violate the APM Guidelines even if they are correctly labelled?

ESMA Answer

30-10-2017

Original language

[ESMA32-51-370 APM Q17]

In accordance with paragraph 8, the APM Guidelines are based on the principle stated in Articles 4 and 5 of the Transparency Directive of providing a fair review of the development and performance of the business and the position of the issuer. In addition, the overall objective of the APM Guidelines, as prescribed in paragraph 6 of the Guidelines, is to contribute to transparent and useful information to the market and improve comparability, reliability and/or comprehensibility of APMs used.

Depending on facts and circumstances, presenting biased APMs which are adjusted to exclude only one-off losses but including, where applicable, one-off gains of the same nature and occurring during the same period may violate the principles set out in articles 4 and 5 of the Transparency Directive and be contrary to the overall objective of the APM Guidelines. Depending on facts and

circumstances, this may be true irrespective of whether these APMs are correctly labelled as the fair labelling may not compensate for the fact that the APMs provided an unfair review of the development and performance of the business and the position of the issuer. Therefore, depending on facts and circumstances, a biased measure of performance may not be compliant with the APM Guidelines.

ESMA_QA_1878

Submission Date

30/10/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q12]

Subject Matter

Definition of APMs; Paragraph 17 of the APM Guidelines.

Question

Do financial measures originally defined or specified in the applicable financial reporting framework and adjusted with the aim of isolating the effect of foreign currency on these measures qualify as APMs?

ESMA Answer

30-10-2017

Original language

[ESMA32-51-370 APM Q12]

Yes. Any adjustments to a financial measure defined or specified in the applicable financial reporting framework transform that measure in an APM in accordance with paragraph 17 of the APM Guidelines.

ESMA_QA_1879

Submission Date

30/10/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q13]

Subject Matter

Scope of the APM Guidelines; Paragraphs 17 to 19 of the APM Guidelines.

Question

Does a segment measure of profitability – which is determined on different accounting basis than the basis defined or specified in the applicable reporting framework – fall within the definition of an APM in the APM Guidelines?

ESMA Answer

30-10-2017

Original language

[ESMA32-51-370 APM Q13]

Yes. Measures disclosed in accordance with the applicable reporting framework (e.g. most of measures disclosed under IFRS 8 *Operating Segments*) but calculated on a different basis than the one defined or specified in the applicable financial reporting framework also fall within the definition of an APM in accordance with the APM Guidelines. The application of the APM Guidelines depends on where these measures are presented (e.g. inside or outside financial statements; regulated information documents or voluntary information).

Please refer to questions ESMA_QA_1868 and ESMA_QA_1869 (historical reference *ESMA32-51-370 APM Q2* and *Q3*) if such APMs are presented inside and outside financial statements.

ESMA_QA_1880

Submission Date

30/10/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q14]

Subject Matter

Application of the scope exemption; Paragraph 19 of the APM Guidelines.

Question

In which circumstances is the scope exemption in paragraph 19 (4th bullet) of the APM Guidelines applicable (i.e. issuers are not required to apply the APM Guidelines when APMs are used to explain the compliance with the terms of an agreement or legislative requirement such as lending covenants or the basis of calculating the director or executive remuneration)?

ESMA Answer

30-10-2017

Original language

[ESMA32-51-370 APM Q14]

The exception in paragraph 19 of the APM Guidelines (4th bullet) is only applicable when an issuer uses APMs solely to explain compliance with terms of an agreement or legislative requirement. If issuers use simultaneously an APM to explain the compliance of terms of agreement or legislative requirement and to provide information on/describe its performance in a given period, this APM is within the scope of the APM Guidelines.

ESMA_QA_1881

Submission Date

30/10/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q15]

Subject Matter

Definition and basis of calculation; Paragraph 20 of the APM Guidelines.

Question

How should an issuer define the APM measure “Organic growth”?

ESMA Answer

30-10-2017

Original language

[ESMA32-51-370 APM Q15]

Paragraph 20 of the APM Guidelines requires issuers to provide users with definitions of the APMs used and their components as well as the basis of calculation adopted, including div of any material hypotheses or assumptions used.

When providing a definition and disclosure on the basis of calculation of an APM indicating the “Organic Growth” of an issuer’s total revenues, the issuer shall present not only the total change in revenues that can be derived from the financial statements, but also the disaggregation of the other components that together with the change in revenue attributable to “Organic Growth”, add up to the total revenue change.

The following example illustrates this case:

- Revenue % change: 20%
- Currency impact^[1]: 10%
- Perimeter impact: 5%

- Organic growth: 5%

To the extent that any components presented are not defined or specified in the applicable financial reporting framework, the issuer shall also explain their nature and provide the definition of each item.

Although the definition is entity-specific, in this example the explanation could be provided by presenting the following information:

- The Currency impact is calculated by translating the accounts for year N of subsidiaries having a functional currency different than the currency of the issuer with N-1 exchange rate;
- Perimeter impact: the impact of changes in the scope of consolidation is determined:
 - for the year N acquisitions, by deducting from total revenue, the amount of revenue generated during year N by the acquired entities;
 - for N-1 acquisitions, by deducting from total revenue, the amount of revenue generated over the months during which the acquired entities were not consolidated in N-1;
 - for N disposals, by adding to total revenue the amount of revenue generated by the divested entities in year N-1 over the months during which those entities were no longer consolidated in N;
 - for the N-1 disposals, by adding to revenue for the fiscal year the amount of revenue generated in the prior fiscal year by the divested entities.

[1] In this example, the currency impact only relates to situations where the functional currency of the issuer differs from the functional currency of its subsidiaries. Please note that there may be variations to the definition of organic growth depending on each specific components (e.g. when the functional currency is Euro and sales in USD)

ESMA_QA_1882

Submission Date

30/10/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q16]

Subject Matter

Reconciliation; Paragraph 26 and 28 of the APM Guidelines.

Question

Do the APM Guidelines require a numeric reconciliation of the APM to “the most reconcilable line item, total or subtotal” presented in the financial statements or is it sufficient to include a qualitative explanation of the items which adjust the financial statement’s figures?

ESMA Answer

30-10-2017

Original language

[ESMA32-51-370 APM Q16]

Paragraph 28 of the APM Guidelines foresees that “the reconciliation should show how the figure is calculated”. Therefore, issuers should provide a reconciliation in the form of a numeric reconciliation between “the most directly reconcilable line item, total or subtotal” presented in financial statements and the APM used. As it is required in paragraph 26 of the APM Guidelines, the reconciliation should separately identify and explain the material reconciling items.

ESMA_QA_1874

Submission Date

12/07/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q8]

Subject Matter

Interim financial statements; Paragraph 31 and 32 of the APMs Guidelines.

Question

Does paragraph 31 of the APMs Guidelines apply to quarterly financial figures included in ad-hoc disclosures published by issuers in accordance with article 17 of MAR when there is no requirement under the Transparency Directive (TD) to publish interim financial statements (e.g. quarterly financial statements)?

How should issuers comply with paragraphs 31 and 32 of the APMs Guidelines?

ESMA Answer

12-07-2017

Original language

[ESMA32-51-370 APM Q8]

Yes. Paragraph 31 of the APMs Guidelines applies to APMs related to quarterly financial figures included in ad-hoc disclosures published in accordance with article 17 of MAR even when the issuer is not required to publish quarterly financial statements in accordance with the TD. Please refer to question ESMA_QA_1870 (historic reference *ESMA32-51-370 APM Q4*).

The following example illustrates how issuers may comply with provisions included in paragraph 31 and 32 of the APMs Guidelines:

An issuer publishes in ad-hoc disclosures in accordance with article 17 of MAR an 'adjusted EBITDA' for Q3 and the subtotal published historically in its financial statements is an EBITDA (most directly reconcilable line item included in the

financial statement). As the Q3 'adjusted EBITDA' is an APM, the issuer should define and reconcile the Q3 'adjusted EBITDA' to the Q3 EBITDA as if that figure had been included in financial statements.

ESMA_QA_1875

Submission Date

12/07/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q9]

Subject Matter

Concept of Prominence; Paragraph 35 and 36 of the APM Guidelines.

Question

How should an issuer apply the principle of “prominence” as included in the APMs Guidelines?

ESMA Answer

12-07-2017

Original language

[ESMA32-51-370 APM Q9]

As the APMs Guidelines do not define the concept of prominence, issuers should use their judgment when complying with this principle. This judgement should be made on a case-by-case basis depending on the documents where the APMs are included.

The notion of prominence is, in essence, qualitative and not merely quantitative. Therefore, counting the number of APMs and measures directly stemming from financial statements may not suffice. When applying its judgement, the issuer should ensure that the measures stemming from financial statements are not displayed with less prominence, emphasis or authority than APMs.

The following factors, among others, could help issuers when exercising their judgement:

- Attention paid to APMs in comparison with measures directly stemming from financial statements;
- Location of APMs within the document;
- Frequency of use;
- Use of bold letters, font size, italic;
- Length of analysis of APMs.

The following illustrative examples may help understand disclosure of APMs being more prominent than disclosure of measures stemming directly from financial statements:

- Presenting an analysis of the income statement only with APMs;
- Omitting comparable measures stemming directly from financial statements in an earnings result release headline or in their key messages;
- Presenting an APM using a style of presentation (e.g. bold, font size) that overly emphasises the APM used over the comparable measure stemming directly from financial statements;
- Presenting an APM significantly before the most directly comparable measure directly stemming from financial statements (e.g. including the APM in the 1st page of a document and the comparable measure/figure directly stemming from financial statements in the last page);
- Describing an APM as, for example, "record performance" or "exceptional" without at least an equally prominent descriptive characterisation of the comparable measure directly stemming from financial statements;
- Providing tabular disclosure of APMs without (i) preceding/accompanying it with an equally prominent tabular disclosure of the comparable measures stemming from financial statements or (ii) including the comparable measures stemming from financial statements in the same table;
- Providing a discussion and/or analysis of an APM without any reference to the comparable measure/figure stemming directly from financial statements.

ESMA_QA_1876

Submission Date

12/07/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q10]

Subject Matter

Compliance by reference; Paragraph 45 and 46 of the APMs Guidelines (not applicable to prospectuses which are covered by a separate regime).

Question

What are the limits for the compliance by reference principle included in paragraph 45 of the APMs Guidelines?

ESMA Answer

12-07-2017

Original language

[ESMA32-51-370 APM Q10]

Paragraphs 45 and 46 provide a practical relief to issuers who may comply with the principles included in the APMs Guidelines if they include a direct reference to other documents previously published which contain the disclosures required by the APMs Guidelines.

Issuers may use the compliance by reference in order to avoid repetition of information in regulated information documents (e.g. ad-hoc disclosures presented in accordance with article 17 of MAR). However, the reference principle cannot be used when complying with the following requirements:

- Comparatives (paragraph 46 of the APMs Guidelines)
- Meaningful labels to the APMs used (paragraph 22 of the APMs Guidelines)
- Prominence and presentation of APMs (paragraph 35 and 36 of the APMs Guidelines)

- Consistency (paragraph 41 of the APMs Guidelines – however, the explanations required therein may be complied with by reference)

ESMA_QA_1877

Submission Date

12/07/2017

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Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q11]

Subject Matter

Definition of an APM; Paragraph 17 to 19 of the APMs Guidelines.

Question

Is 'result of operating activities' an APM for the purpose of the APMs Guidelines?

ESMA Answer

12-07-2017

Original language

[ESMA32-51-370 APM Q11]

Unless the applicable financial reporting framework defines or specifies "result of operating activities", this measure is an APM for the purpose of the APMs Guidelines.

Despite the fact that there is a reference in paragraph 55 of the Basis for Conclusion of IAS 1 *Presentation of Financial Statements* to 'results of operating activities', operating results or results from operating activities are not defined or specified in IFRS.

Therefore, under the IFRS framework, measures labelled as 'operating results', 'results of operating activities' or other similar labels are within the scope of the APMs Guidelines when presented outside financial statements.

In case such APMs are presented inside and outside financial statements please refer to question ESMA_QA_1868 (historic reference *ESMA32-51-370 APM Q2*).

ESMA_QA_1873

Submission Date

27/01/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q7]

Subject Matter

Concept of “corresponding previous periods”; Paragraph 37 of the APMs Guidelines.

Question

How should the concept of "corresponding previous periods" in relation to financial reports, ad-hoc disclosures or prospectuses be applied by issuers or the persons responsible for the prospectus?

ESMA Answer

27-01-2017

Original language

[ESMA32-51-370 APM Q7]

Issuers or the persons responsible for the prospectus should disclose figures for all periods presented i.e. where the financial reports or prospectuses have more than one comparative period, comparatives on the APMs should be provided for all prior periods presented.

When APMs are included in ad-hoc disclosures, the “corresponding previous periods” should usually refer to the comparatives required by the interim/ annual financial statements as required by the applicable financial reporting framework.

ESMA_QA_1871

Submission Date

27/01/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q5]

Subject Matter

Segment information; Paragraphs 17 to 19 of the APMs Guidelines.

Question

Do the APMs Guidelines apply to measures presented in segment information?

ESMA Answer

27-01-2017

Original language

[ESMA32-51-370 APM Q5]

Unless the measures presented in segment information are defined or specified in the applicable financial reporting framework, the APMs Guidelines apply to these measures if they are presented outside financial statements (e.g. management report).

As paragraph 4 of the APMs Guidelines excludes APMs disclosed in financial statements, they do not apply to APMs included in the segment information within financial statements (paragraph 4 of the APMs Guidelines).

In case such APMs are presented inside and outside financial statements please refer to question ESMA_QA_1868 (historical reference *ESMA32-51-370 APM Q2*).

ESMA_QA_1870

Submission Date

27/01/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q4]

Subject Matter

Interim financial reports; Paragraphs 3 and 4 of the APMs Guidelines.

Question

Do the APMs Guidelines apply to interim financial reporting?

ESMA Answer

27-01-2017

Original language

[ESMA32-51-370 APM Q4]

The APMs Guidelines apply to interim financial reporting if it falls under the definition of regulated information set out in the TD. Therefore, the APMs Guidelines apply to: (i) additional periodic financial information, when this information is published in accordance with article 3 (1a) of the TD; (ii) half yearly financial reports, as required by article 5 of the TD; or (iii) any financial information published in accordance with article 17 of MAR (such as ad-hoc disclosures).

Where interim financial reports or the additional periodic financial information are regulated information, the APMs Guidelines only apply to the information accompanying financial statements (e.g. interim management report) as the APMs Guidelines exclude from their scope the financial statements (paragraph 4).

ESMA_QA_1872

Submission Date

27/01/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q6]

Subject Matter

Labels used on APMs; Paragraphs 22 and 25 of the APMs Guidelines.

Question

Do the APMs Guidelines apply to other labels than “non-recurring”, “infrequent” or “unusual” which are specifically referred to in paragraph 25 of the guidelines?

ESMA Answer

27-01-2017

Original language

[ESMA32-51-370 APM Q6]

Yes, the APMs Guidelines apply to all labels of APMs used by issuers or the persons responsible for prospectus.

Although the APMs Guidelines do not prescribe which labels can or cannot be used, the labels used should (i) be meaningful; (ii) not be misleading; and (iii) reflect the content and the basis of calculation of the APMs.

ESMA_QA_1868

Submission Date

27/01/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q2]

Subject Matter

Measures presented simultaneously inside and outside financial statements;
Paragraphs 4, 17 and 19 of APMs Guidelines.

Question

Paragraph 4 of the APMs Guidelines excludes from its scope the APMs disclosed in the financial statements (as defined in section II). Do the APMs Guidelines apply to APMs simultaneously presented inside and outside financial statements?

ESMA Answer

27-01-2017

Original language

[ESMA32-51-370 APM Q2]

Yes. The APMs Guidelines apply to all financial measures which fall within the definition set out in paragraphs 17 to 19 of the APM Guidelines and are disclosed outside financial statements but in documents within the scope of regulated information.

The definition of an APM excludes from its scope financial measures defined or specified in the applicable financial reporting framework. Therefore, financial measures (e.g. subtotals or totals) which are not defined or specified in the applicable financial reporting framework fall under the scope of application of the APMs Guidelines irrespective of whether these financial measures are also disclosed in financial statements.

Where APMs directly identifiable from financial statements are also disclosed outside financial statements, the issuer or the persons responsible for the prospectus:

- (i) Do not need to provide a reconciliation between the APM used and the most directly reconcilable line item, total or subtotal presented in financial statements (paragraph 29);
- (ii) Where applicable, may use the compliance by reference principle (paragraphs 45 to 48 of the APMs Guidelines) and refer to the specific page or section in the financial statements, where this information is readily and easily accessible to users.

ESMA_QA_1869

Submission Date

27/01/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q3]

Subject Matter

Financial measures calculated using exclusively figures stemming from financial statements; Paragraphs 4, 17 to 19 of the APMs Guidelines.

Question

Do the APMs Guidelines apply to financial measures such as financial ratios calculated using exclusively figures directly stemming from financial statements?

ESMA Answer

27-01-2017

Original language

[ESMA32-51-370 APM Q3]

Yes. The APMs Guidelines apply to financial measures including financial ratios calculated using exclusively figures directly stemming from the financial statements (e.g. IFRS figures) unless:

- a)** these measures are defined or specified by the applicable financial reporting framework (paragraph 17 of the APMs Guidelines).
- b)** financial measures fall within the exception provided in paragraph 4 (i.e. they are disclosed in accordance with applicable legislation, other than the applicable financial reporting framework),

Unless the figures included in the financial measures fall within the definition of an APM, the APMs Guidelines apply to the measures (e.g. financial ratio) and not the figures. Otherwise, the APMs Guidelines apply to both.

In case such APMs are presented inside and outside financial statements please refer to question ESMA_QA_1868 (historical question reference: *ESMA32-51-370 APM Q2*).

ESMA_QA_1867

Submission Date

20/12/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Level 3 Regulation

Guidelines on Alternative Performance Measures

Topic

Alternative Performance Measures (APM)

Historic Question Reference

[ESMA32-51-370 APM Q1]

Subject Matter

Applicability of ESMA's Guidelines on Alternative Performance Measures (APMs) to prospectuses comprising documents published before and on/after 3 July 2016

Question

ESMA's Guidelines on Alternative Performance Measures (ESMA/2015/1415) apply to APM's disclosed by issuers or persons responsible for the prospectus when publishing regulated information or prospectuses on or after 3 July 2016, cf. paragraph 5 of the Guidelines. Given that a prospectus can be formed by a combination of a registration document and a securities note, and a summary where applicable, and that prospectuses or base prospectuses can incorporate by reference the information contained in a previously approved registration document, do the Guidelines apply:

- to a registration document containing APMs which was published before 3 July when that registration document is combined with a securities note published on/after 3 July?
- to a registration document (or prospectus) containing APMs which was published before 3 July when the information contained in that registration document is incorporated by reference into a prospectus or base prospectus published on/after 3 July?
- to a supplement containing APMs published on/after 3 July when the prospectus or registration document was published before 3 July?

ESMA Answer

20-12-2016

Original language

[ESMA32-51-370 APM Q1]

As set out in paragraph 5 of the Guidelines (cited above), the applicability of the Guidelines is determined with reference to the publication date of the prospectus.

As such, where a registration document containing APMs was published before 3 July and that registration document is combined with a securities note published on/after 3 July, the Guidelines do not apply to the registration document but only to the securities note and the summary, where applicable. Equally, where the information contained in such a registration document is incorporated by reference into a prospectus or a base prospectus published on/after 3 July, the Guidelines do not apply to the registration document but only to the remainder of the prospectus or base prospectus.

Where a registration document containing APMs was approved but not published before 3 July and that registration document is combined with a securities note published on/after 3 July, or the information contained in that registration document is incorporated by reference into a prospectus or a base prospectus published on/after 3 July, the Guidelines apply to the registration document as well as to the securities note and the summary, where applicable, or to the prospectus/base prospectus. In these instances, the registration document should be updated through the mechanism set out in Article 12(2) of the Prospectus Directive.

Where a prospectus or registration document published before 3 July is supplemented on/after 3 July and the supplement contains APMs, the Guidelines apply to the supplement.

ESMA_QA_2036

Submission Date

23/10/2015

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Notifications of major shareholdings

Historic Question Reference

[ESMA31-67-127 TD Q20]

Subject Matter

Horizontal aggregation; TD Art 13a

Question

How do the new aggregation requirements set out in Article 13a work with the existing Articles 9, 10 and 13 in practice?

ESMA Answer

23-10-2015

Original language

[ESMA31-67-127 TD Q20]

Article 13a extends to a natural person or a legal entity the notification requirements laid down in Articles 9, 10 and 13 when the number of voting rights held directly or indirectly by such person or entity under Articles 9 and 10 aggregated with the number of voting rights relating to financial instruments held directly or indirectly under Article 13 reaches, exceeds or falls below the thresholds set out in Article 9(1).

The table below illustrates the changing position in an issuer and provides examples of the notifications to be performed assuming the minimum threshold for notification is 5%:

Day	Position of direct/ indirect holdings of voting rights (Art. 9/10)[1]	Position in financial instruments (Art. 13)	Total position (Art. 13a)	Notification required? Yes/No	Threshold triggered according which basket (Art. 9/10 [2], 13, 13a TD)?
1	7%	-	7%	Yes	Art. 9/10
2	7%	2%	9%	No	-
3	8%	4%	12%	Yes	Art. 13a(1)
4	11% (exercise of 3% f.i.)	1%	12%	Yes	Art. 9/10
5	8%	6%	14%	Yes	Art. 9/10 Art. 13
6	8%	4%	12%	Yes	Art. 13
7	9% (exercise of 1% f.i.)	3%	12%	No	-
8	9%	7%	16%	Yes	Art. 13 Art. 13a(1)

Day	Position of direct/ indirect holdings of voting rights (Art. 9/10)[1]	Position in financial instruments (Art. 13)	Total position (Art. 13a)	Notification required? Yes/No	Threshold triggered according which basket (Art. 9/10 [2], 13, 13a TD)?
9	12%	7%	19%	Yes	Art. 9/10

[1] For purposes of convenience holdings under Article 9 and 10 are not separately represented.

[2] This case is an example of Art. 13a(2), where the holder acquires the underlying shares of the financial instrument and crosses or reaches a threshold laid down by Article 9(1) and has to make a disclosure accordingly.

ESMA_QA_2027

Submission Date

23/10/2015

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Financial reporting

Historic Question Reference

[ESMA31-67-127 TD Q2]

Subject Matter

Additional information in annual and half yearly financial reports; TD Art. 4–5

Question

Should issuers be allowed to include additional elements in the annual and half yearly financial reports, other than those required in articles 4 and 5 of the Transparency Directive?

ESMA Answer

23-10-2015

Original language

[ESMA31-67-127 TD Q2]

Additional information such as that provided on a voluntary basis or in accordance with national requirements in annual and half yearly financial reports is allowed as long as it does not render the information misleading.

ESMA_QA_2041

Submission Date

23/10/2015

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Notifications of major shareholdings

Historic Question Reference

[ESMA31-67-127 TD Q25]

Subject Matter

Major shareholding notification – group notifications; TD Art. 12(3)

Question

Question a: According to Article 12(3) an undertaking is exempted from making the notification if the notification is made by its (ultimate) parent undertaking – in which cases does Article 12(3) apply?

Question b: What details regarding its subsidiary undertakings does a parent undertaking have to provide if it makes use of Art. 12(3)?

ESMA Answer

23-10-2015

Original language

[ESMA31-67-127 TD Q25]

Answer a: Article 12(3) applies in cases, where one or more subsidiary undertakings cross a threshold irrespectively whether the parent undertaking crosses a threshold itself or not.

The basic principle of Article 12(3) is to treat groups as a single investor and to require only a single notification in a case of groups. However, in the situations provided for in Article 12(4) and (5), subsidiaries can disregard the interests of its parent undertaking(s) and thus the group cannot be considered as a single investor.

Although Art. 12(3) is not mandatory it is according to the purpose of Art. 12(3) recommended that even in cases where only on subsidiary level a threshold is crossed the (ultimate) parent undertaking discloses the notification as only by this way the markets get always the full picture of the aggregated group holdings. If the

notification is disclosed on an individual level, it is expected that at least the group's full chain of controlled undertakings i.e. including the parent undertaking(s), is provided.

The following table* reflects when Art. 12(3) is applicable and when not. Parent undertaking A has only indirect holdings in the issuer through subsidiary B and C. Both B and C have only direct holdings in the issuer and are directly controlled by A.

**The examples in the table are based on the thresholds set out in the Transparency Directive.*

Day	Aggregated holdings of parent undertaking A	Holdings of subsidiary undertaking B	Holdings of subsidiary undertaking C	Case of Art. 12(3)? (Yes/No)	Threshold crossed by?
1 st	18%	9%	9%	Yes	A, B, C
2 nd	18%	7%	11%	Yes	C
3 rd .	18%	6%	12%	No	None
4 th .	18%	0%	18%	Yes	B, C
5 th	17%	1%	16%	No	None

Day	Aggregated holdings of parent undertaking A	Holdings of subsidiary undertaking B	Holdings of subsidiary undertaking C	Case of Art.12(3)? (Yes/No)	Threshold crossedby?
6 th .	14%	0%	14%	Yes	A, C

Answer b: In principle the information according to Art. 12(1) and Art. 11(3) of the Commission Directive 2007/14/EC has to be contained in the notification. As the parent undertaking discloses the notification, the information of the resulting situation in terms of voting rights according to Art. 12(1)(a) and Art. 11(1) 2007/14/EC has to reflect the situation of the whole group. However, it is expected that the notification reflects at least the names and the individual holdings of Art. 10(a) to (d) of such subsidiary undertakings, which hold more than the minimum threshold set out in Article Art. 9.

ESMA_QA_2040

Submission Date

23/10/2015

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Transparency

Historic Question Reference

[ESMA31-67-127 TD Q24]

Subject Matter

Publication of sanctions and administrative measures without “undue delay”; TD Art 29

Question

As regards the decision making process, shall National Competent Authorities (NCAs) publish decisions on sanctions and measures only after the exhaustion of all relevant legal remedies (or the expiry of the deadline to exercise them)?

ESMA Answer

23-10-2015

Original language

[ESMA31-67-127 TD Q24]

No. According to Art 29(1) of the TD, decisions on administrative measures and sanctions as referred to in Art 28b of the TD shall be published by NCAs without undue delay without prejudice to any legal remedy of appeal against such decisions.

Given the presumption of lawfulness of administrative acts, final decisions on administrative measures and sanctions shall be published immediately after they have been adopted by the national competent authority, in compliance with the relevant national administrative procedures. Prompt publication of such decisions is an important tool for the competent authorities to inform market participants of what practices are to be considered an infringement of the TD and should not be dependent on the legal remedies against them, which are not harmonized across Member States.

The publication of such administrative measures and sanctions adopted by national competent authorities does not have any impact on the right of appeal. Indeed,

pursuant to Article 29 (2) of TD, where an appeal is submitted against the adopted decision, national competent authorities are obliged either to include information to that effect in the publication at the time of the publication or to amend the publication if the appeal is submitted after the initial publication.

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23/10/2015

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Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Transparency

Historic Question Reference

[ESMA31-67-127 TD Q23]

Subject Matter

Additional periodic information (including quarterly reports); TD Art 3

Question

Could additional periodic financial information (including quarterly reports) published on a voluntary basis be considered as regulated information?

ESMA Answer

23-10-2015

Original language

[ESMA31-67-127 TD Q23]

Issuers may publish additional periodic financial information (including quarterly reports) on a voluntary basis as well as in other instances such as when resulting from market practice in the absence of national legal obligations or when requested by regulated markets in the absence of national legal obligation.

Publication of additional periodic financial information (including quarterly reports) stemming from those situations should not be regarded per se as regulated information according to the Transparency Directive. However, the issuer shall assess whether the disclosed information falls under the definition of inside information according to Article 7 of Market Abuse Regulation (MAR). In such a case, additional periodic financial information (including quarterly reports) should be also treated as regulated information under Article 17 of MAR.

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Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Financial reporting

Historic Question Reference

[ESMA31-67-127 TD Q22]

Subject Matter

The requirement to “remain publicly available”; TD Art 4, 5 and 6

Question

From what date should an issuer apply the 10 year period requirements for the information to remain publicly available under Articles 4(1), 5(1) and 6 of the TD?

ESMA Answer

23-10-2015

Original language

[ESMA31-67-127 TD Q22]

Amending Directive 2013/50/EU introduces the requirement that annual financial reports (Article 4), half-yearly financial reports (Article 5) and reports on payments to governments (Article 6) (thereafter “the reports”) published after national transposition of the amending Directive should remain publicly available for at least 10 years.

For those reports that were made publicly available less than 5 years before the transposition date, the reports should remain publicly available for at least 10 years. This period of time will start counting from the date the reports were originally published and not the transposition date.

For those reports that were made publicly available 5 years or more before the transposition date, the requirement of the amending Directive will not apply.”

ESMA_QA_2037

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Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Transparency

Historic Question Reference

[ESMA31-67-127 TD Q21]

Additional Legal Reference

Prospectus Regulation (Regulation 2017/1129)

Subject Matter

Change of home Member State and impact on Prospectus Regulation; TD Art 2(1)(i) letter (iii)

Question

Is a change of home Member State by a third country issuer during the transitional period valid for the purposes of the PR?

ESMA Answer

23-10-2015

Original language

[ESMA31-67-127 TD Q21]

Yes. Article 2(1) letter (i) point (iii) of the Transparency Directive permits an issuer whose securities are no longer admitted to trading on the regulated market of its home Member State but are admitted to trading in one or more other Member States, to choose a new home Member State from amongst the Member States where its securities are admitted to trading on a regulated market and, where applicable, the Member State where the issuer has its registered office.

In the case of third country issuers of shares or debt securities the denomination per unit of which is less than EUR 1,000, the Prospectus Regulation (EU) 2017/1129 (PR)^[1] and the TD are linked in order to ensure consistency. As such, if those issuers choose a new home Member State under Article 2(1)(i)(iii) of the TD, such choice also applies in the context of the PR (Article 2(m)(iii) of the PR).

The before-mentioned change of home Member State pursuant to Article 2(1)(i)(iii) of the TD by a third country issuer of shares or debt securities the denomination per unit of which is less than EUR 1,000 shall be valid for the purposes of Article 2(m)(iii) of the PR, even if such a change of home Member State has been made prior to 27 November 2015.

[1] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC

ESMA_QA_2035

Submission Date

23/10/2015

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Financial reporting

Historic Question Reference

[ESMA31-67-127 TD Q19]

Subject Matter

Reporting of payments to governments at consolidated level; TD Art 6

Question

What type of issuers should prepare reports on payments to governments according to Article 6?

ESMA Answer

23-10-2015

Original language

[ESMA31-67-127 TD Q19]

Issuers that are active in the extractive or logging of primary forest industries (thereafter “issuers”) are subject to Article 6 of TD and also to the Accounting Directive 2013/34/EU (hereinafter “AD”). The latter provides for the definition of these issuers as well as their obligations.

Issuers incorporated in the EU that fall under the definition of "Public Interest Entities" (PIEs) according to Article 2(1) of the AD and consequently, if they are active in such industries, are subject to the PIEs' requirement to prepare a report on payments to governments (Chapter 10 of AD).

Given that issuers incorporated in a third country do not fall under the definition of PIE, the AD is not directly applicable to them. Therefore, and in order to cover third country issuers in addition to EU issuers, the TD requires all issuers to report payments to governments at consolidated level. As a result, issuers incorporated in a third country which are falling under the TD scope are also required to prepare a consolidated report.

ESMA_QA_2034

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23/10/2015

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Transparency

Historic Question Reference

[ESMA31-67-127 TD Q18]

Subject Matter

Dissemination of regulated information; Implementing Directive 2007/14/EC (L2D)
Art. 12

Question

Many issuers use service providers for the dissemination of regulated information. In some Member States, these service providers are required to be approved by the competent authority, whereas in other Member States such authorisation is not required.

Article 12 of the L2D sets the minimum standards for the dissemination of regulated information in order to “ensure that investors, even if situated in a Member State other than that of the issuer, have equal access to regulated information” (first sentence of recital 16 of the L2D). Pursuant to Article 12(4) of the L2D “the issuer (...) shall not be responsible for systemic errors or shortcomings in the media to which the regulated information has been communicated.”

When the issuer uses a service provider for dissemination of regulated information, will the service provider be covered by the definition of media? If not, what kind of recovery procedures for system failures should a service provider have in order to ensure the dissemination of regulated information in a manner ensuring fast access to such information on a non-discriminatory basis as required by article 21(1) of the TD?

ESMA Answer

23-10-2015

Original language

[ESMA31-67-127 TD Q18]

The second sentence of recital 16 of the L2D states: "*Issuers should ensure that those minimum standards [for the dissemination of regulated information] are met, whether by disseminating the regulated information by themselves or by entrusting a third party to do so on their behalf.*" Therefore, a service provider cannot be

considered being covered by the exemption of Article 12(4) of the L2D.

Dissemination of regulated information may take place through different ways including entrusting services providers to do so. ESMA considers that issuers are ultimately legally responsible for ensuring that the requirements of Article 21 of the TD are met. Therefore, issuers' responsibilities in relation to dissemination of regulated information are only fulfilled when information reaches the media, even if a service provider is used to do so.^[1] The responsibility under the TD remains within the issuer regardless of any contractual obligation and/or responsibilities that may derive from the contract between the issuer and the service provider.

In its Level 2 Advice (ref. CESR/05-407) ESMA has set out standards for issuers using a service provider. ESMA considers that whenever issuers make use of service providers to meet their obligations under Article 21 of the TD, the issuers should ensure that the service provider meets the requirements set out in paragraphs 47–59 of the Level 2 Advice. Pursuant to these standards, the recovery service of a service provider must be available during the operational hours of the service provider (i.e. 24 hours a day, seven days a week) in order to ensure the timely receipt and dissemination of regulated information to media.

^[1] Paragraph 9 of CESR's advice (ref. CESR/05-407).

ESMA_QA_2033

Submission Date

23/10/2015

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Transparency

Historic Question Reference

[ESMA31-67-127 TD Q17]

Subject Matter

Responsibilities of the host Member State; TD Art. 21(3)

Question

According to Article 21(3) of the Transparency Directive (TD), the host Member State (MS) shall ensure disclosure of regulated information in accordance with Article 21(1) of the TD if the securities are only admitted to trading in the host MS. In this case the disclosure of the regulated information will be done under the legal regime of the host MS. Article 19(1) of the TD demands that an issuer who discloses regulated information files that information with the Competent Authority (CA) in its home MS. Since the home MS necessarily differs from the host MS (cf. to Art. 2(1)(i) and (j) of the TD) the CA of the host MS may not know that the issuer is required to disclose/has disclosed certain information and which particular information has to be disclosed/has been disclosed. How can the CA of the host MS ensure that the issuers fulfill their obligations in these cases?

ESMA Answer

23-10-2015

Original language

[ESMA31-67-127 TD Q17]

According to the TD, in case the securities are not admitted to trading in their home Member State, the applicable regime depends on the number of host Member States where the securities have been admitted to trading:

Securities admitted to trading	Rules on disclosure	Who does the enforcement of the rules on disclosure?
Only in one host MS	Those of the host MS	The host CA

Securities admitted to trading

In several host MSs

Rules on disclosure

Those of the home MS

Who does the enforcement of the rules on disclosure?

The home CA

Some CAs informed that their Member States have implemented a solution in their national legislation where the issuer has an obligation to file all regulated information also with the host CA. In other Member States the Competent Authorities involved agree on a case by case basis on how to apply Article 21(3) of the TD.

ESMA_QA_2032

Submission Date

23/10/2015

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Transparency

Historic Question Reference

[ESMA31-67-127 TD Q16]

Subject Matter

The requirement to make regulated information public; TD Art. 21(1)

Question

Question a: Is the obligation to make regulated information (as defined in Article 2(1)(k) of the TD) public fulfilled if the issuer only discloses the regulated information to the public in a manner ensuring fast access to such information on a non-discriminatory basis, or must the issuer also disseminate the information throughout the Community?

Question b: Does making the regulated information available to the official appointment mechanism (OAM) meet the criteria of making regulated information public?

ESMA Answer

23-10-2015

Original language

[ESMA31-67-127 TD Q16]

Answer a: The Articles requiring issuers to make public regulated information (e.g. Articles 4, 5, 6, 12(6) ...of the TD) together with Article 21(1) of the TD establish the legal framework for issuers when providing access to regulated information. In accordance with those Articles, when issuers¹ disclose regulated information making it available to the public in a manner ensuring fast access to such information, they are also required to:

- a) disseminate it to the public throughout the Union in compliance with at least the minimum standards set out in Article 12 of Commission Directive 2007/14/EC; and,
- b) make regulated information available to the national official appointment mechanism (OAM) for its central storage.

Additionally, when the issuer, or any person having requested, without the issuer's consent, the admission of its securities to trading on a regulated market, discloses regulated information, it shall at the same time file that information with the home national competent authority (Article 19 of the TD).

Furthermore, in case of annual reports (Article 4 of the TD), half year reports (Article 5 of the TD) and payments to government reports (Article 6 of the TD), issuers, or the person who has applied for admission to trading on a regulated market without the issuer's consent, are required to ensure that regulated information remains publicly available for at least 10 years.

Disclosure and dissemination of regulated information may be done either by the issuer or by a third-party. While disclosure of regulated information requires making the information available to the public, dissemination of regulated information requires active distribution from the issuers to the media which may take place through different ways such as communication agencies, news-papers, internet, use of service providers or OAMs², in order to fulfill requirements of Article 12 of Commission Directive 2007/14/EC.

The requirement of making regulated information available to the public is fulfilled when regulated information is disseminated to the public. However, the requirement to disseminate regulated information is not fulfilled when the information is only made public.

Answer b: No. Making regulated information available by filing it with the OAM does not meet the criteria of making regulated information public. The OAM is in charge of the storage of regulated information. The storage of regulated information (filing with the OAM) and making public regulated information are two separate

obligations imposed on the issuer.

Nevertheless, when national legislation allows for it, OAMs may also disseminate regulated information to the public throughout the Union in addition to its storage³.

[1] Article 19 and 21 of the TD refers to “issuer or the person who has applied for admission to trading without the issuer’s consent”.

[2] In case national legislation allows OAMs to disseminate regulated information throughout the Union in addition to its storage.

[3] The Commission Recommendation of October 2007 on the electronic network of officially appointed mechanisms for the central storage of regulated information referred to in Directive 2004/109/EC of the European Parliament and of the Council provides that OAM should allow investors and interested parties to easily access regulated information.

ESMA_QA_2031

Submission Date

25/02/2011

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Transparency

Historic Question Reference

[ESMA31-67-127 TD Q15]

Subject Matter

Designation of an agent for the exercise of financial rights; TD Art. 17 and 18

Question

Question a: Articles 17 and 18 of the TD require issuers to ensure that all the facilities and information necessary to enable shareholders / debt securities holders to exercise their rights are available in the home Member State. Each issuer is also required to designate as its agent a financial institution through which shareholders / debt securities holders may exercise their financial rights.

Must the issuer appoint as its agent a financial institution domiciled in the home Member State? Or is it sufficient to appoint a financial institution domiciled in another Member State?

Question b: Before the TD was adopted, similar provisions were included in Articles 65(2)(c) and 78(2)(b) of the Directive 2001/34/EC. However, there was an exemption for issuers providing financial services: "In particular, it [the issuer] must: (...) designate as its agent a financial institution through which holders of debt securities may exercise their financial rights, unless the under-taking itself provides financial services."

Does the TD require issuers who are financial institutions to appoint as an agent a financial institution other than itself?

ESMA Answer

25-02-2011

Original language

[ESMA31-67-127 TD Q15]

Answer a: It is up to the issuer to ensure that facilities to exercise the (financial) rights of holders of shares / debt securities are available in the home Member State. However, the domicile of the agent does not have to be in the home Member State.

Answer b: No, issuers who are financial institutions may still appoint themselves as an agent.

ESMA_QA_2030

Submission Date

27/10/2009

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Notifications of major shareholdings

Historic Question Reference

[ESMA31-67-127 TD Q12]

Subject Matter

Disclosure of major holdings in case of joint investors' account; TD Art. 9 and 10

Question

Shall the owners of a joint investors account (an account for two persons that are considered co-owners of the securities contained in the joint account), in order to calculate their thresholds, aggregate the proportion of voting rights attached to their personal accounts to the proportion of voting rights attached to the shares of the joint account? How do these persons notify their participation to the joint account?

ESMA Answer

27-10-2009

Original language

[ESMA31-67-127 TD Q12]

ESMA notes that legal implications of a joint account vary among Member States, since the issue is also linked with national civil law. Therefore, there are different requirements in the Member States, such as:

- a) voting rights held in a joint account have to be aggregated to voting rights held in individual accounts in full and both owners of the joint account are to disclose their holdings in full;
- b) the notification requirement depends on the terms of the account or agreements relating to the use of voting rights; or
- c) holdings in joint account are aggregated to voting rights held in individual account only in proportion to the ownership.

In any case, attention has to be paid to whether the owners of the joint account have adopted, by concerted exercise of voting rights, a lasting common policy towards the management of the issuer in question (Art. 10 (a) of the TD).

Whenever an obligation to notify holdings arises, the person(s) making the notification should distinguish the holdings in the notification.

ESMA_QA_2029

Submission Date

27/10/2009

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Notifications of major shareholdings

Historic Question Reference

[ESMA31-67-127 TD Q11]

Subject Matter

Major shareholding notification – acquisition of a shareholder; TD Art. 9(1)

Question

Company A is a major shareholder in an issuer X whose shares are admitted to trading on a regulated market. Company B, which previously does not hold any shares or voting rights in X, acquires control in company A. Should B notify its holdings in issuer X even though the holdings of A in issuer X remain the same?

ESMA Answer

27-10-2009

Original language

[ESMA31-67-127 TD Q11]

As B indirectly acquires voting rights of issuer X, it has to notify its holdings in X. As required by Article 12(1) of the TD, the chain of controlled undertakings through which voting rights are effectively held, must be disclosed in the notification.

ESMA_QA_2028

Submission Date

30/04/2009

Status: Answer Published

Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Notifications of major shareholdings

Historic Question Reference

[ESMA31-67-127 TD Q10]

Subject Matter

Class by class disclosure; TD Art. 9(1)

Question

Pursuant to Article 9(1) of the TD “[t]he voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended. Moreover this information shall also be given in respect of all the shares which are in the same class and to which voting rights are attached.”

Is the provision concerning “class by class disclosure” an autonomous obligation? In other words, must a notification be made when the person reaches, exceeds or falls below the relevant thresh-olds in terms of a single class of shares (e.g. ordinary shares) calculated on the basis of all shares of that class issued, or it is only an additional disclosure requirement which arises only in the case in which an obligation of notification is met in terms of all the shares with voting rights held calculated on the basis of all the voting shares issued?

ESMA Answer

30-04-2009

Original language

[ESMA31-67-127 TD Q10]

The calculation of notification thresholds will be made on the basis of all the shares with voting rights attached. The class by class disclosure is therefore not considered as basis for calculation of thresholds but only as an additional disclosure requirement in cases where the notification obligation has arisen.