

Client Update: Shareholder Notification Requirements

The Financial Service Authority's (FSA) Disclosure and Transparency Rules (DTR) came into force on 20 January, introducing a new regime for the notification of major shareholdings. As was discussed in our special December alert ('Companies Act 2006 – What Companies Need to Think About Now') the shareholder notification requirements located in the Companies Act 1985 have now been repealed and are replaced by the new DTR, which are located in the FSA Handbook.

Applicability of New Disclosure Rules

The new rules apply to anyone who holds shares in U.K. public companies registered under the Companies Act 1985 (CA85) or any other body corporate incorporated in and having a principal place of business in the U.K. with shares admitted to trading on certain regulated and prescribed markets (including AIM and PLUS markets).

Note that the new rules may apply to any entity (non-U.K. entities included) with shares admitted to trading on a regulated or prescribed market where the U.K. is their home state (i.e., the U.K. is the location of its registered and/or head office). The new rules broaden the scope of affected entities compared with the CA85, which only imposed reporting requirements on those who held shares in U.K. public companies.

Note further that all AIM and PLUS companies must in addition comply with the provisions of the AIM Rules (or PLUS Rules, as appropriate), which also require changes to significant shareholdings to be disclosed.

Disclosure Thresholds

Where a person holds, either directly or indirectly, shares or financial instruments (such

as options) of U.K. issuers (including issuers admitted to AIM and PLUS markets) or non-U.K. issuers which reach or exceed the thresholds (as listed below), a notification obligation to the FSA arises.

The new regime sets out two separate thresholds dependent upon whether the shares are issued by U.K. or non-U.K. issuers. For U.K. issuers, the position is the same as under the old regime, i.e., shareholders will need to disclose holdings which reach or exceed 3% and each 1% threshold thereafter. For non-U.K. issuers (where they have shares admitted to trading on a U.K. regulated market and the U.K. is their home member state), shareholders will need to disclose holdings at 5%, 10%, 15%, 20%, 25%, 30%, 35%, 50% and 75%, in accordance with the requirements of the Transparency Directive.

Note that certain voting rights (such as the holdings of EEA qualifying investment managers, asset managers, registered U.S. investment managers and shares belonging to OEICs) can be disregarded for the purpose of notification below the 5% threshold, but have to be disclosed at 5% and 10% and every whole percentage figure above 10%.

Disclosure Calculation

To determine whether a shareholder has reached or exceeded the relevant disclosure threshold, the calculation is to be made in respect of all voting shares. Therefore, a shareholder must calculate all shares to which voting rights are attached, even if the exercise of such rights is suspended.

Method of Notification

Notification has to be made within two trading days in the case of shares of U.K. companies (three trading days for AIM and PLUS

companies) and four trading days in the case of non-U.K. issuers. Notification must be made using the prescribed form from the FSA's website. Where the issuer's securities are admitted to trading on a regulated market, a copy of the notification must also be filed with the FSA.

Further Points to Note

Related Changes

There are new obligations on issuers to keep the market informed of changes in their share capital. Each company is now required to announce the total number of voting rights and capital admitted to trading (stating the number of voting rights

attaching to treasury shares) at the end of each month during which there is an increase or decrease in its share capital.

Investigations into Interests in Shares

Finally, note that the section 212 CA85 provisions, which allow a company to obtain information from parties with interests in their shares, has been carried over into the Companies Act 2006 (Part 22), so a company may still discover who owns its shares and whether any stake-building is taking place.

Further updates on the new Companies Act will follow.

Practice group contacts

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