Clarifying the changes to the Transparency Rules for listed companies

On 26 November 2015, the Disclosure and Transparency Rules (DTRs) were amended as described in policy statement PS15/26. Most of the rule changes are intended to implement Directive 2013/50/EU amending the Transparency Directive.

This briefing discusses some of the more significant points for listed companies.

Financial reporting

Two noteworthy changes have been made to the financial reporting rules in DTR 4. These changes are potentially relevant for all issuers which have securities (shares, debt securities or GDRs) admitted to trading on a regulated market such as the LSE’s Main Market (premium or standard listing), and whose Home Member State for Transparency Directive purposes is the United Kingdom.

Deadline for half-yearly reports: Issuers of shares or debt securities now only need to release their half-yearly financial reports within three months (formerly two months) of the end of the half-year.

Reports to be available for 10 years: All issuers of securities must now ensure that their annual financial reports and (if applicable) half-yearly financial reports remain publicly available for at least 10 years (formerly 5 years). ESMA has indicated that this requirement applies to all reports made publicly available on or after 27 November 2010. This requirement does not apply to reports made publicly available before that date.

Notifications regarding major holdings of voting rights

Some of the key issues raised by the changes made to the DTR 5 regime for notifying major holdings of voting rights are summarised below. Broadly, DTR 5 applies to issuers which have voting shares admitted to trading on a regulated market, and whose Home Member State for Transparency Directive purposes is the United Kingdom. DTR 5 also applies to UK companies whose shares are admitted to trading on a prescribed market such as AIM, and to holders of voting rights in any issuer subject to DTR 5.

Financial instruments relating to new shares: Holdings of financial instruments relating to unissued (new) shares are no longer notifiable under DTR 5. Examples of such instruments include convertible bonds, nil-paid rights, open offer entitlements, warrants and call options in respect of new shares. Previously, such instruments were generally notifiable on the grounds that they were financial instruments with “similar economic effects” to qualifying financial instruments. Under the amended rules, such instruments are only notifiable if they relate to existing issued shares.

Stock lending exemptions removed: The stock lending exemptions have been removed from DTR 5. Previously, for a stock lender, a loan of shares under a standard stock lending agreement did not amount to a disposal of those shares. For a stock borrower, previously voting rights attaching to shares acquired under a stock lending agreement which were on-lent or otherwise disposed of no later than the next trading day were disregarded, provided the borrower did not vote (or declare any intention of voting) the shares.
No transitional arrangements: There are no
transitional arrangements for the DTR 5 changes.
Where the DTR 5 changes increased or reduced a
person’s notifiable holdings, so that they reached
or crossed a notification threshold (3%, 4%, 5% etc
for UK issuers), they were obliged to notify their
re-calculated holdings within 2 trading days (for UK
issuers) after 26 November 2015.

Home Member State announcements
and notifications

The following points apply to all issuers which are
EEA-incorporated, have a UK registered office and
have shares, or low-denomination debt securities
(under €1,000), admitted to trading on a regulated
market. It does not matter if such an issuer also
has other types of securities admitted to trading in
the EEA (or elsewhere).

The rules may differ for other types of issuers.
Please contact us for further details.

Home State announcements: Issuers must make
an RIS announcement stating that the United
Kingdom is their Home Member State for the
purposes of the Transparency Directive.

There is no deadline for making such an
announcement. However, issuers may wish to
include this point within their next regulatory
announcement. For example:

“For the purposes of the Transparency Directive,
the Home Member State of [Issuer] is the
United Kingdom.”

Home State notification to UKLA: Issuers must
also disclose to the UKLA that the United Kingdom
is their Home Member State for the purposes of
the Transparency Directive. There is no deadline
for this notification. The UKLA has issued a
standard form to be used for such disclosures.

In our view, almost all UK-listed issuers will have
already notified their Home Member State to the
UKLA. This is because, since about January 2008,
the UKLA’s Application for Admission of Securities
form has asked issuers to identify their Home
Member State. Any issuer which has listed any
securities since January 2008 will have answered
this question, and so clearly “disclosed” the
issuer’s Home Member State to the UKLA.

The UKLA has issued guidance accepting that
existing issuers who have already notified their
Home Member State to the UKLA have no obligation
do so again. However, because the new form
contains more detail than previously requested
and that detail will be used by ESMA, the UKLA has
asked all such issuers to voluntarily complete the
new form, and submit it to the UKLA. There is no
deadline for this.

Home State notification to other regulators:
Issuers with securities admitted to regulated
markets in multiple EEA states (i.e. not just the
UK) must also notify their Home Member State to
the competent authorities in each of those states.

For further information on the matters highlighted in this briefing, please contact your usual
Slaughter and May contact.