

Insights

PRIMARY MARKET BULLETIN NO.33

29 March 2021

SUMMARY

The Financial Conduct Authority (FCA) has published Primary Market Bulletin No.33 (PMB No.33) featuring Brexit-related changes for EEA audit firms, details of their new online portal for submitting major shareholdings notifications (TR-1 Form), their review work on issuers' compliance with major shareholding notifications and their response to feedback received on Delayed Disclosure of Inside Information.

DELAYED DISCLOSURE OF INSIDE INFORMATION

Our article on [PMB No. 31](#) summarises the FCA's review on delayed disclosures of inside information. Since then the FCA has received feedback and confirms the following:

- Periodic financial information – if the accounts, for example, contain an item which is inside information and there is no legitimate interest to delay disclosure, the inside information must be announced without delay. Where there is no delay in disclosure of inside information or no inside information exists, no delayed disclosure notification to the FCA is required.
- Board changes – there was feedback around the extent to which information 'is precise' for the purposes of MAR Article 7. The FCA appreciate that the 'precise' definition requires judgment and they factor this into their surveillance, monitoring and case selection. Their view however, remains the same, that issuers should not delay disclosing negative news, for example, until there is offsetting positive news.

MAJOR SHAREHOLDING NOTIFICATIONS

DTR 5 and Total Voting Rights (TVR) announcements: an issuer in scope must, at the end of each calendar month during which an increase or decrease has occurred, disclose to the public (i) the total number of voting rights and capital in respect of each class of share which it issues (ii) the total number of voting rights attaching to shares of the issuer which are held by it in treasury.

Between 1 January 2017 and 1 July 2020 the FCA conducted a review of TVR announcements and although the level of compliance was generally good, they noted the following:

- Issuers should ensure that all financial instruments to which voting rights are attached are included in the calculation of the TVRs figure.
- A significant minority of issuers failed to use the appropriate announcement headline to report new TVRs figures or reported this information as a part of another announcement regarding an acquisition or disposal of shares by the issuer. Immediate disclosure of voting rights following an acquisition or disposal of shares by an issuer in accordance with DTR 5.5.1R and DTR 5.6.1AR does not exempt the issuer from the obligation to report a new TVRs figure at the end of the calendar month.
- Often, information regarding new TVRs was disclosed as a part of proposed or conditional equity placing announcements or share repurchases, before these transactions were formally approved or took place. This does not exempt an issuer from the obligation to report a new TVRs figure following settlement and at the end of the calendar month.

The FCA also identified 138 instances where major shareholders had not disclosed their new positions after the change to the TVRs, assuming a 3% disclosure threshold.

From a practical perspective therefore:

- shareholders need to assess whether their position has changed as a result of an event changing the breakdown of voting rights; and
- issuers need to report changes to TVRs clearly, on time and using the correct headline – in particular TVR announcements need to be made when shares are issued, even if the TVRs have been previously announced, prior to the issue of the shares/admission of those shares.

New process for submitting TR-1: Since 22 March 2021, all TR-1 notifications in relation to voting rights held in an issuer admitted to trading on a UK regulated market must be submitted to the FCA via the major shareholdings notification portal using the FCA's Electronic Submission System. Investors are no longer able to send TR-1 Forms via email. If an investor is not registered to use the portal, they should follow the instructions on this page: [Register to submit a notification to the FCA](#).

Short selling disclosure: following the FCA's first enforcement action, in October 2020, for the failure to disclose in a timely manner net short positions in a listed issuer, the FCA has used PMB No.33 to remind investors of the importance of net short position disclosures.

DISCLOSURE OF PAYMENTS TO GOVERNMENTS BY ISSUERS IN THE EXTRACTIVE INDUSTRIES

Following a review in 2020, the FCA has identified a number of points including:

- several issuers in scope omitted publication of the report stating they are exempt on the basis of similar filings. The FCA has made no determinations of equivalence and therefore all issuers within scope of DTR 4.3A are required to comply with these rules;
- nearly a fifth of Payments to Governments Reports reviewed were missing sufficient breakdowns by project; and
- over 10% of all Payments to Governments Reports for the period were not filed with the NSM, as required.

The FCA have highlighted that unless market practice improves they will look at stronger interventions, including enforcement investigations.

AUDITORS FROM EEA STATES

If you are a third country (including EEA) issuer with transferable securities admitted to trading on a UK regulated market and your auditors are from an EEA State, they will have to register as 'third country auditors' with the FRC ([further information](#)) in time for the publication of annual financial statements for financial years beginning on or after 1 January 2021.

[Primary Market Bulletin No.33](#)

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MEET THE TEAM



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