



Companies Act 2006

2006 CHAPTER 46

PART 43

TRANSPARENCY OBLIGATIONS AND RELATED MATTERS

Transparency obligations

1266 Transparency rules

(1) After section 89 of the Financial Services and Markets Act 2000 insert—

“Transparency obligations

89A Transparency rules

- (1) The competent authority may make rules for the purposes of the transparency obligations directive.
- (2) The rules may include provision for dealing with any matters arising out of or related to any provision of the transparency obligations directive.
- (3) The competent authority may also make rules—
 - (a) for the purpose of ensuring that voteholder information in respect of voting shares traded on a UK market other than a regulated market is made public or notified to the competent authority;
 - (b) providing for persons who hold comparable instruments (see section 89F(1)(c)) in respect of voting shares to be treated, in the circumstances specified in the rules, as holding some or all of the voting rights in respect of those shares.
- (4) Rules under this section may, in particular, make provision—
 - (a) specifying how the proportion of—
 - (i) the total voting rights in respect of shares in an issuer, or

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- (ii) the total voting rights in respect of a particular class of shares in an issuer, held by a person is to be determined;
 - (b) specifying the circumstances in which, for the purposes of any determination of the voting rights held by a person (“P”) in respect of voting shares in an issuer, any voting rights held, or treated by virtue of subsection (3)(b) as held, by another person in respect of voting shares in the issuer are to be regarded as held by P;
 - (c) specifying the nature of the information which must be included in any notification;
 - (d) about the form of any notification;
 - (e) requiring any notification to be given within a specified period;
 - (f) specifying the manner in which any information is to be made public and the period within which it must be made public;
 - (g) specifying circumstances in which any of the requirements imposed by rules under this section does not apply.
- (5) Rules under this section are referred to in this Part as “transparency rules”.
- (6) Nothing in sections 89B to 89G affects the generality of the power to make rules under this section.

89B Provision of voteholder information

- (1) Transparency rules may make provision for voteholder information in respect of voting shares to be notified, in circumstances specified in the rules—
- (a) to the issuer, or
 - (b) to the public,
- or to both.
- (2) Transparency rules may make provision for voteholder information notified to the issuer to be notified at the same time to the competent authority.
- (3) In this Part “voteholder information” in respect of voting shares means information relating to the proportion of voting rights held by a person in respect of the shares.
- (4) Transparency rules may require notification of voteholder information relating to a person—
- (a) initially, not later than such date as may be specified in the rules for the purposes of the first indent of Article 30.2 of the transparency obligations directive, and
 - (b) subsequently, in accordance with the following provisions.
- (5) Transparency rules under subsection (4)(b) may require notification of voteholder information relating to a person only where there is a notifiable change in the proportion of—
- (a) the total voting rights in respect of shares in the issuer, or
 - (b) the total voting rights in respect of a particular class of share in the issuer,
- held by the person.

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- (6) For this purpose there is a “notifiable change” in the proportion of voting rights held by a person when the proportion changes—
- (a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,
 - (b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or
 - (c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.
- (7) In subsection (6) “designated” means designated by the rules.

89C Provision of information by issuers of transferable securities

- (1) Transparency rules may make provision requiring the issuer of transferable securities, in circumstances specified in the rules—
- (a) to make public information to which this section applies, or
 - (b) to notify to the competent authority information to which this section applies,
- or to do both.
- (2) In the case of every issuer, this section applies to—
- (a) information required by Article 4 of the transparency obligations directive;
 - (b) information relating to the rights attached to the transferable securities, including information about the terms and conditions of those securities which could indirectly affect those rights; and
 - (c) information about new loan issues and about any guarantee or security in connection with any such issue.
- (3) In the case of an issuer of debt securities, this section also applies to information required by Article 5 of the transparency obligations directive.
- (4) In the case of an issuer of shares, this section also applies to—
- (a) information required by Article 5 of the transparency obligations directive;
 - (b) information required by Article 6 of that directive;
 - (c) voteholder information—
 - (i) notified to the issuer, or
 - (ii) relating to the proportion of voting rights held by the issuer in respect of shares in the issuer;
 - (d) information relating to the issuer’s capital; and
 - (e) information relating to the total number of voting rights in respect of shares or shares of a particular class.

89D Notification of voting rights held by issuer

- (1) Transparency rules may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer—

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- (a) initially, not later than such date as may be specified in the rules for the purposes of the second indent of Article 30.2 of the transparency obligations directive, and
 - (b) subsequently, in accordance with the following provisions.
- (2) Transparency rules under subsection (1)(b) may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer only where there is a notifiable change in the proportion of—
- (a) the total voting rights in respect of shares in the issuer, or
 - (b) the total voting rights in respect of a particular class of share in the issuer,
- held by the issuer.
- (3) For this purpose there is a “notifiable change” in the proportion of voting rights held by a person when the proportion changes—
- (a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,
 - (b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or
 - (c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.
- (4) In subsection (3) “designated” means designated by the rules.

89E Notification of proposed amendment of issuer’s constitution

Transparency rules may make provision requiring an issuer of transferable securities that are admitted to trading on a regulated market to notify a proposed amendment to its constitution—

- (a) to the competent authority, and
 - (b) to the market on which the issuer’s securities are admitted,
- at times and in circumstances specified in the rules.

89F Transparency rules: interpretation etc

- (1) For the purposes of sections 89A to 89G—
- (a) the voting rights in respect of any voting shares are the voting rights attached to those shares,
 - (b) a person is to be regarded as holding the voting rights in respect of the shares—
 - (i) if, by virtue of those shares, he is a shareholder within the meaning of Article 2.1(e) of the transparency obligations directive;
 - (ii) if, and to the extent that, he is entitled to acquire, dispose of or exercise those voting rights in one or more of the cases mentioned in Article 10(a) to (h) of the transparency obligations directive;
 - (iii) if he holds, directly or indirectly, a financial instrument which results in an entitlement to acquire the shares and is an Article 13 instrument, and

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- (c) a person holds a “comparable instrument” in respect of voting shares if he holds, directly or indirectly, a financial instrument in relation to the shares which has similar economic effects to an Article 13 instrument (whether or not the financial instrument results in an entitlement to acquire the shares).
- (2) Transparency rules under section 89A(3)(b) may make different provision for different descriptions of comparable instrument.
- (3) For the purposes of sections 89A to 89G two or more persons may, at the same time, each be regarded as holding the same voting rights.
- (4) In those sections—
 - “Article 13 instrument” means a financial instrument of a type determined by the European Commission under Article 13.2 of the transparency obligations directive;
 - “UK market” means a market that is situated or operating in the United Kingdom;
 - “voting shares” means shares of an issuer to which voting rights are attached.

89G Transparency rules: other supplementary provisions

- (1) Transparency rules may impose the same obligations on a person who has applied for the admission of transferable securities to trading on a regulated market without the issuer’s consent as they impose on an issuer of transferable securities.
 - (2) Transparency rules that require a person to make information public may include provision authorising the competent authority to make the information public in the event that the person fails to do so.
 - (3) The competent authority may make public any information notified to the authority in accordance with transparency rules.
 - (4) Transparency rules may make provision by reference to any provision of any rules made by the Panel on Takeovers and Mergers under Part 28 of the Companies Act 2006.
 - (5) Sections 89A to 89F and this section are without prejudice to any other power conferred by this Part to make Part 6 rules.”.
- (2) The effectiveness for the purposes of section 155 of the Financial Services and Markets Act 2000 (c. 8) (consultation on proposed rules) of things done by the Financial Services Authority before this section comes into force with a view to making transparency rules (as defined in the provisions to be inserted in that Act by subsection (1) above) is not affected by the fact that those provisions were not then in force.