**Share dealing disclosures**

This element outlines the regime which applies to the disclosure of share dealings in relation to listed companies.

**Introduction**

Listed companies are not always aware of the identity of their own shareholders. Unlike private companies, listed companies are not permitted to make transfers of their shares subject to prior approval. This is because the shares must be freely transferable under the UKLRs. Due to the inevitable delay between shares being traded and the register of members being updated, it would be possible for shareholders to build up a substantial stake in a company without the directors’ knowledge. In addition, many shareholders hold their shares through nominees, therefore their identity is not immediately apparent to the company.

As a result, a number of provisions in legislation and in the DTRs provide for shareholders to disclose their shareholdings or voting rights to companies within a short time of obtaining a certain level of shareholding or in particular circumstances.

When a person purchases or disposes of shares in a listed company, it is important that they are aware of the disclosure obligations that may arise, particularly if the person is, or is closely associated with, a director of that company.

The term ‘**stakebuilding**’ is here used to refer to a shareholder building up a stake in a company. This can be done by purchasing shares in the market or by purchasing shares privately from other shareholders.

In addition, when a listed company receives certain disclosures from its shareholders, it must in turn disclose that information to an RIS under the UKLRs and the DTRs.

**Rights and disclosure obligations of listed company shareholders (a non-exhaustive list)**

The % of shares or voting rights in the company and Rights and/or obligations of the shareholder;

Any amount - All shareholders may be required by the company by way of notice to disclose details of past and present shareholdings. s. 793 CA

Any amount (once total consideration exceeds €5,000 per calendar year) - PDMRs and PCAs must disclose dealings to the issuer and the FCA (see element entitled Dealings by PDMRs for further detail). Art. 19(1) UK MAR

3% or more - All shareholders must disclose interest in shares to the company and file a copy with the FCA. DTR 5.1.2, DTR 5.9.1

10% or more - Shareholders of a company holding over 10% of the paid up capital may require the company to serve a s. 793 CA notice. s. 803 CA

‘’‘’30% or more - Constitutes control, as defined in the Takeover Code. Takeover Code definitions

‘’90% or more - Compulsory acquisition procedure is available regarding takeover offers for offeree companies. s. 979 CA

**Disclosure obligations relevant to listed companies**

Disclosure made to the company/ Disclosures made by the company/ References

Art. 19(1) UK MAR - Disclose details of a dealing by a PDMR or person closely associated with the PDMR promptly and no later than two working days after receipt of notification of the transaction. Art. 19(3) UK MAR

DTR 5.1.2 - Notify an RIS as soon as possible and in any event by not later than the end of the trading day following receipt of information from a shareholder about the percentage of voting rights that it holds. DTR 5.8.12

N/A – no disclosure made to the company.

Disclose to the public, at the end of each calendar month during which any increase or decrease in share capital has occurred:

(a) the total number of voting rights and capital in respect of each class of shares it issues; and

(b) the total number of voting rights attaching to shares of the issuer which are held in treasuryAll shareholders must disclose interest in shares to the company and file a copy with the FCA.

DTR 5.6.1

N/A – no disclosure made to the company.

Disclose to the public, as soon as possible and by no later than the end of the next business day, where a relevant increase or decrease in share capital has occurred:

(a) the total number of voting rights and capital in respect of each class of shares it issues; and

(b) the total number of voting rights attaching to shares of the issuer which are held in treasury

DTR 5.6.1A, DTR 5.6.1B

**Disclosure obligations under DTR 5**

Notification of the acquisition or disposal of major shareholdings

DTR 5 requires dealings in shares and financial instruments by certain substantial shareholders to be disclosed to the company. This regime applies to:

• companies with shares admitted to trading on a regulated market in the UK; and

• any other body corporate incorporated in the UK with shares admitted to trading on certain exchange regulated markets e.g. AIM.

**DTR 5: obligations of the shareholder**

Under DTR 5.1.2(1), a person must notify the company of the percentage of voting rights they hold if they acquire or dispose of shares in the company to which voting rights are attached and if, as a result of that acquisition or disposal, the percentage of voting rights they hold as a shareholder:

* reaches, exceeds or falls below 3% and/or each 1% threshold change upwards or downwards between 3% and 100%; or
* in the case of a non-UK company, reaches, exceeds or falls below 5%, 10%, 15%, 20%, 30%, 50% and 75%.

It is important to recognise that the definition of ‘shareholder’ in DTR 5.1.2 covers both a person’s direct and indirect shareholding (see Glossary Definition on FCA website). A person is an indirect holder of shares to the extent they are entitled to acquire, dispose of, or exercise voting rights in relation to shares in any of the situations set out in DTR 5.2.1, including:

1. where parties agree to exercise their voting rights in relation to shares in accordance with a lasting common policy towards the management of the issuer (DTR 5.2.1(a));
2. voting rights which are held or may be exercised by an undertaking controlled by that person (DTR 5.2.1(e)) (NB holdings of parent companies and controlled undertakings (subsidiary undertakings) must be aggregated (DTR 5.2.2(1)); and
3. voting rights which a person may exercise as a proxy where that person can exercise the voting rights at their discretion in the absence of specific instructions from the shareholders (DTR 5.2.1(h)).  (This can catch the chair of a meeting who holds discretionary proxies which, taken with their own holdings exceed the 3% threshold).

**DTR 5.1.1(6)** states that, for the purposes of calculating whether any percentage threshold is reached, exceeded or fallen below and in any resulting notification, the proportion of voting rights held should be **rounded down to the next whole number.**

Institutional investors have systems and controls in place to monitor and aggregate their holdings for the purposes of DTR 5: this ensure that they can make the required notifications in a timely manner.

**DTR 5: content and timing of the DTR 5.1.2 notification**

A notification given in accordance with DTR 5.1.2 must contain the information set out in DTR 5.8.1 which includes the identity of the shareholder, details of the new shareholding and the date on which the relevant threshold was crossed. Notification must be made using FCA form ‘TR1’ (DTR 5.8.10) and a copy must be filed with the FCA (DTR 5.9.1).

The notification must be made as soon as possible and not later than two trading days after the date on which the shareholder learnt of the transaction. Where the shareholder was party to or instructed the transaction, they are deemed to have learnt of the transaction no later than two trading days following the transaction (DTR 5.8.3).

**DTR 5: increases/decreases in the company’s share capital**

Shareholders should be aware that any increase or decrease in a company’s total number of issued voting shares (due to e.g. a share buyback or secondary share issue) may trigger a disclosure obligation for individual shareholders, even if they have not personally acquired or disposed of shares. (See DTR 5.1.2(2), 5.6.1, 5.6.1A and 5.6.1B.)

To assist shareholders, under DTR 5.6.1, at the end of each month during which such an increase or decrease in its issued voting share capital occurs, a company must announce the total number of voting shares and capital in respect of each class of its shares. However, a ‘material’ change in issued voting share capital (1% or more) must be announced by a company as soon as possible and by no later than the end of the business day following which the increase/decrease occurs (DTR 5.6.1A and 5.6.1B).

**DTR 5: notifications of ‘economic’ interests in shares**

The disclosure obligations under DTR 5 relate not only to shares (transferable securities) but also certain derivative instruments such as options, futures and swaps, which either give the holder an unconditional right or discretion to acquire the underlying shares on maturity, or are referenced to such shares and have a similar economic effect (even if there is no right to physical settlement) - see DTRs 5.3.1(1), 5.3.2, 5.3.2A and 5.3.3(1). In each case, the shares concerned must be already in issue.

**DTR 5: obligations of the listed company**

After receiving a notification under DTR 5.1.2, a company must notify an RIS of that fact as soon as possible and by not later than the end of the following trading day for UK companies with shares admitted to trading on a regulated market (DTR 5.8.12(1)) and by no later than the end of the third trading day following receipt for most other issuers (DTR 5.8.12(2)). Note that AIM companies should also consider the AIM Rules for Companies which contain disclosure obligations with shorter deadlines than those contained in DTR 5.

**Sanctions for non-compliance with DTR 5**

There are no criminal sanctions for non-compliance by shareholders under DTR 5. However, under s.89NA FSMA, the FCA may apply to the courts to suspend the voting rights of a shareholder that has breached the provisions of DTR 5, provided such breach is sufficiently serious to make it appropriate for the order to be made.

In addition, there are provisions in ss.91(1B), 91(2) and 91(2A) FSMA which allow the FCA to impose a penalty on an issuer and/or a person and/or a relevant officer of an issuer (of such amount as it considers appropriate) for contravening a provision of DTR 5. S.89K FSMA includes the power of public censure of the issuer and s.89L FSMA the power to suspend or prohibit trading of an issuer’s securities generally.

The FCA also has powers to ensure the relevant information is disclosed to the market. Under DTR 1A.3.1, the FCA may require a company to publish such information in such form as it considers appropriate to protect investors and ensure the smooth operation of the market. If the company fails to do this the FCA may publish the information itself.

**Power of company to investigate shareholdings under s. 793 CA**

A public company is entitled to ascertain the identity of the beneficial owners of its shares by serving notice under s.793 CA 2006.

Such notice must be in writing and may require the person to whom it is addressed to give details of their own past (i.e. during the previous three years) or present interest in the company’s shares. All interests must be disclosed within such reasonable time as is specified in the notice. Under s.803 CA 2006, shareholders holding more than 10% of the company’s paid up share capital can require the company to act under s.793 CA 2006.

This procedure enables companies to ascertain the names of beneficial owners of shares held in nominee names, including those held in nominee accounts in CREST.

Failure to comply with s.793 CA 2006 notice may lead to imprisonment, a fine or both (s.795 CA 2006).

**Summary**

* Listed companies may not know, in the ordinary course, who owns their shares.
* A range of provisions exist to ensure that both the listed company and the market have a clear picture of when certain important dealings take place.
* Specific dealing disclosure requirements apply to PDMRs and their PCAs (see element entitled Dealings by PDMRs).
* In addition, DTR 5 sets out disclosure requirements for shareholders with a stake of 3% or above. DTR 5 applies to a wide range of types of economic exposure to transferable securities, including derivatives.
* Share dealing disclosures are important in a takeovers context in order for a target company and the market to understand who is building a stake in the target shares (see element entitled Stakebuilding).