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Additional Information

Level 1 Regulation
Transparency Directive (TD) Directive 2004/109/EC

Topic
Notifications of major shareholdings

Historic Question Reference
[ESMA31-67-127 TD Q27]

Subject Matter
Notification of Major Holdings; TD Art. 9(1)

Question
Does the major shareholder obligation in Article 9(1) of Transparency Directive 2004/109/EC apply to holdings in issuers whose shares are not admitted to trading on an EU regulated

market if depository receipts (DRs) in respect of that issuer's shares are admitted to trading on an EU regulated market?

- Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation -

ESMA Answer

30-11-2023

Original language

[ESMA31-67-127 TD Q27]

Article 9(1) of the Transparency Directive 2004/109/EC[1] (TD) requires Member States to ensure that all shareholders, following the acquisition or disposal of shares of an issuer of shares admitted to trading on an EU regulated market, in the sense of Article 4(1), point 21, of Directive 2014/65/EU, and to which voting rights are attached, inform the issuer of the resulting proportion of voting rights they hold where that proportion reaches certain thresholds.

Considering that:

1. pursuant to Article 2(1)(e) TD[2], persons that hold depository receipts are considered as "shareholders" of an issuer when they hold underlying shares represented by the depository receipts; and that
2. pursuant to Article 2(1)(d) TD[3], "issuers" encompass issuers of the securities represented by the depository receipts, whether or not these securities are admitted to trading on an EU regulated market,

the holders of a depository receipt listed on an EU regulated market are subject to the provisions set out in Article 9(1) TD, including when the underlying shares of an issuer are not admitted to trading on an EU regulated market.

[1] Article 9(1) TD - Notification of the acquisition or disposal of major holdings - 1. *The home Member State shall ensure that, where a shareholder acquires or disposes of shares of an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached, such shareholder notifies the issuer of the proportion of voting rights of the issuer held by the shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 50 % and 75 %.* […].

[2] Article 2(1)(e) TD: "*shareholder means any natural person or legal entity governed by private or public law, who holds, directly or indirectly: (i) shares of the issuer in its own name and on its own account; (ii) shares of the issuer in its own name, but on behalf of another natural person or legal entity; (iii) depository receipts, in which case the holder of the depository receipt shall be considered as the shareholder of the underlying shares represented by the depository receipts*".

[3] Article 2(1)(d) TD: "'*issuer' means a natural person, or a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market. In the case of depository receipts admitted to trading on a regulated market, the issuer means the issuer of the securities represented, whether or not those securities are admitted to trading on a regulated market*".