



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Guidance on Transparency Regulatory Framework

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1. Introduction

In accordance with the provisions of Section 1383(7) of the Companies Act 2014, the Central Bank has issued guidance on a number of topics to assist users of the Transparency (Directive 2004/109/EC) Regulations 2007, as amended (the Transparency Regulations), Part 2 (Transparency Requirements) of the Central Bank (Investment Market Conduct) Rules 2019 (the IMC Rules) and related legislation.

This guidance comes into effect at the date of publication.

In addition, the Central Bank has on its [website](#) set out the procedures that should be complied with when sending notifications to, or making filings with, the Central Bank.

The European Securities and Markets Authority (ESMA) has issued Guidelines on a number of areas relevant to those that are subject to Directive 2004/109/EC (the Transparency Directive). In particular, ESMA Guidelines on Alternative Performance Measures (the APM Guidelines) apply to alternative performance measures disclosed by issuers when publishing regulated information. The Central Bank has incorporated the APM Guidelines into its supervisory practices and expects issuers to comply with them.

ESMA also publishes Q&As on the Transparency Directive on its website. The purpose of these Q&As is to promote common supervisory approaches and practices in the application of the Transparency Directive and its implementing measures, as well as to provide guidance regarding certain requirements of the Transparency Directive to market participants. Relevant persons should regularly monitor the ESMA website and familiarise themselves with relevant Guidelines and Q&As available on it in order to comply with transparency (regulated markets) law (as defined in section 1379 of the Companies Act 2014). Relevant persons should also regularly monitor the Central Bank's website and its "Markets Update" publication in order to stay informed about Central Bank decisions on ESMA Guidelines.

It is not the policy of the Central Bank to provide legal advice on matters arising pursuant to transparency (regulated markets) law. Any guidance provided should not be construed as legal advice or a legal interpretation of transparency (regulated markets) law. It is a matter for any person who may fall within the scope of transparency (regulated markets) law to seek legal advice regarding its application or otherwise to their particular set of circumstances.

2. Notification of Home Member State

Notifications of home Member State to the Central Bank in accordance Regulation 2A(4)(b) of the Transparency Regulations should be made using the Standard Form for Disclosure of Home Member State published on ESMA's [website](#).

3. Publication and Dissemination of Regulated Information

3.1 Publication and Dissemination of Regulated Information

An issuer subject to Regulation 33 of the Transparency Regulations which is disseminating and making public regulated information in accordance with Rule 6 of the IMC Rules, must send that regulated information either:

- a) directly to a regulatory information service (RIS); or
- b) indirectly to a RIS through the Announcements Service of Euronext Dublin¹ (Euronext Direct).

References in the IMC Rules to regulated information being sent directly to a RIS shall be interpreted accordingly.

Information as regards the process for disseminating and making public regulated information via Euronext Direct is available at <https://direct.euronext.com/>.

An issuer is obliged to publish regulated information within the timeframes specified in the Transparency Regulations and the IMC Rules. It is the issuer's responsibility to ensure that announcements sent directly to a RIS or indirectly to a RIS through Euronext Direct are published within the timeframes specified in the Transparency Regulations and the IMC Rules. An issuer must therefore ensure that announcements are sent in good time and in the correct format to enable such publication.

3.2 Distribution when a RIS is not available

The fact that there is no RIS open for business is not, in itself, sufficient grounds for delaying the dissemination and making public of regulated information. Where such a situation arises, the issuer must comply with Rule 7 of the IMC Rules. When informing the Central Bank, in accordance with Rule 7(2) of the manner in which it intends to comply with Rule 7(1) the issuer should specify:

- the two news wire services or other media that ensure dissemination and making public of regulated information in accordance with

¹ The Irish Stock Exchange plc trading as Euronext Dublin.

transparency (regulated markets) law and the RIS to which the regulated information will be distributed; and

- the circumstances which give rise to the need to disseminate and make public regulated information when no RIS is open for business.

4. Periodic Financial Information

4.1 Requirement to communicate regulated information to the media in unedited full text

Half-Yearly Financial Reports

Issuers must ensure their half-yearly financial reports are communicated to the media in unedited full text. This means that the unedited full text of a half-yearly financial report must be contained within the announcement published on a RIS. The announcement containing the unedited full text of the half-yearly financial report must also include an indication of the website on which the half-yearly financial report is available.

The Central Bank also considers that an announcement containing a PDF document of the half-yearly financial report, rather than its unedited full text, also meets the requirements of the Transparency Regulations. The announcement containing a PDF document must also include an indication of the website on which the half-yearly financial report is available.

An announcement which simply contains a link to the website on which the half-yearly financial report is available or which makes reference to a location where the half-yearly financial report is available for physical inspection does not meet the requirements of the Transparency Regulations.

Annual Financial Report

Regulation 33(5)(b)(ii) of the Transparency Regulations states that “[i]f information is of a type that would be required to be disseminated in a half-yearly financial report then information of such a type that is contained in an annual financial report shall be communicated to the media in unedited full text.”

The Central Bank considers that the information “of such a type” includes the financial report items required in a half-yearly financial report, i.e. a set of financial statements, a management report and a responsibility statement. This information must be disseminated and made public through the RIS in unedited full text at the same time the annual financial report is published. In addition, the announcement of this information on the RIS must

include an indication of the website on which the annual financial report is available.

The Central Bank considers an announcement containing the entire annual financial report in unedited full text or an announcement containing a PDF document of the annual financial report in unedited full text to also satisfy the requirements of Regulation 33(5)(b)(ii). Any such announcement must include an indication of the website on which the annual financial report is available.

An announcement which simply contains a link to the website on which the annual financial report is available or which makes reference to a location where the annual financial report is available for physical inspection does not meet the requirements of the Transparency Regulations.

4.2 Compliance with the obligations set out in the Transparency Regulations

The Central Bank may impose administrative sanctions in the case of an adverse assessment in relation to a contravention of the Transparency Regulations, any other provision of transparency (regulated markets) law or Part 2 of the IMC Rules. In addition, failure to publish periodic financial information within the timeframes specified in the Transparency Regulations may result in the suspension of an issuer's securities from trading.

The Central Bank has requested Euronext Dublin to suspend trading in the securities of issuers as a result of the relevant issuer's failure to publish annual financial or half-yearly financial reports on time. In order to avoid such suspension (and potential administrative sanctions) issuers should ensure that regulated information is published within the timeframes and using the methods and format of publication specified in the Transparency Regulations.

4.3 Reliance on universal registration document to fulfil obligation to publish periodic financial reports

When filing a universal registration document (URD) with the Central Bank for the purpose of fulfilling transparency (regulated markets) law requirements, the website details specified in Rule 56(c) of the IMC Rules should be included in the submission email.

4.4 Change in accounting reference date

If an issuer changes its accounting reference date after the relevant financial year has ended, the obligations under the Transparency Regulations to prepare and make public an annual financial report for the period ending on

the original accounting reference date will still apply and cannot be avoided by any subsequent change to the accounting reference date.

4.5 Content of Annual Management Report

Rule 9 of the IMC Rules, requires that an issuer's annual management report include (to the extent necessary) analysis using "financial key performance indicators". The Central Bank understands these to be factors by reference to which the development, performance or position of the issuer's business can be measured effectively.

5. Major Shareholdings

5.1 Timeliness of disclosure

To ensure the timely disclosure of major shareholding information, it is essential that both the person making the notification and the issuer comply with their obligations under Part 5 of the Transparency Regulations and the IMC Rules. Both parties need to ensure that adequate procedures and controls are put in place to ensure such compliance and be mindful of the need to liaise effectively with each other in this regard. In particular, an issuer should ensure it is readily apparent to those making a notification to which email address the notification to the issuer should be sent (for example, by setting out an appropriate email address on its website) while those making a notification should ensure that notifications are sent to the correct email address.

5.2 Form of Notification to Issuer and filing with Central Bank

A notification to the issuer in accordance with the notification requirements of Part 5 of the Transparency Regulations or Rule 13 of the IMC Rules should be made using the Standard Form (TR-1) (Standard form for notification of major holdings) available in electronic format on the Central Bank's website [here](#).

The information to be filed with the Central Bank under Regulation 22 and Rule 13 of the IMC Rules must include the details required in the Annex to the Standard Form TR-1 (details contained in the separate Annex need not be sent to the issuer).

5.3 Notification thresholds

For the purposes of calculating whether any percentage threshold in Part 5 of the Transparency Regulations, or in Rule 13 of the IMC Rules is reached, exceeded or fallen below and in any resulting notification, the proportion of voting rights held should if necessary be rounded down to the next whole number.

5.4 Effective date of Acquisition or Disposal

For the purposes of Part 5 of the Transparency Regulations, an acquisition or disposal of shares is to be regarded as effective when the relevant transaction is executed, unless the transaction provides for settlement to be subject to conditions which are beyond the control of the parties in which case the acquisition or disposal is to be regarded as effective on the settlement of the transaction.

5.5 Notification Timeframes – Knowledge of Transactions

For the purposes of Rule 14 of the IMC Rules and Regulation 21(3)(a) of the Transparency Regulations, where a transaction is conditional on the approval by a public authority of the transaction or on a future uncertain event the occurrence of which is outside the control of the parties to the transaction, the Central Bank's view is that the parties have knowledge of the acquisition, disposal or possibility of exercising voting rights only when the relevant approvals are obtained or when the event occurs.

5.6 Calendar of Trading Days

The IMC Rules provide that “trading day” means a day referred to in the calendar of trading days specified on the website of the Central Bank.

For this purpose, the days on which Euronext Dublin has specified that its cash market will be open in its document named “Holiday Calendar for Cash and Derivatives Markets” as published on its website in respect of the relevant year should be regarded as included in the calendar of trading days for the purposes of the IMC Rules.

As of the date of publication, Euronext Dublin's “Holiday Calendar for Cash and Derivatives Markets” is available [here](#).

5.7 Bearer instruments

The Central Bank considers the holder of a bearer instrument to be the shareholder of any underlying shares represented by the bearer instruments for the purposes of the Transparency Regulations.

5.8 Determining whether a notification is required

In determining whether a notification is required a person's net (direct or indirect) holding in a share (and of relevant Regulation 17 financial instruments²) may be assessed by reference to that person's holdings at a

² “Regulation 17 financial instrument” refers to a financial instrument that satisfies the conditions of Regulation 17(1)(a) or (b) of the Transparency Regulations. See also section “Regulation 17 Financial Instruments” in this Guidance Note.

point in time up to midnight of the day for which the determination is made (taking account of acquisitions and disposals executed during that day).

5.9 Indirect shareholders

Cases (a) to (h) in Regulation 15 of the Transparency Regulations identify situations where a person may be able to control the manner in which voting rights are exercised and where (taking account of any aggregation with other holdings) a notification to the issuer may need to be made.

In the Central Bank's view:

- (1) Case (e) produces the result that it is always necessary for the parent undertaking of a controlled undertaking to aggregate its holding with any holding of the controlled undertaking (subject to the exemptions implicit in Case (e) and others in Regulation 18);
- (2) Case (f) includes a person carrying on investment management and which is also the custodian of shares to which voting rights are attached;
- (3) Case (g) does not result in a unit holder in a collective investment scheme or other investment entity being treated as the holder of voting rights in the scheme property (provided always such persons do not have any entitlement to exercise, or control the exercise of, such voting rights); neither are such persons to be regarded as holding shares "indirectly";
- (4) Case (h), although referring to proxies, also describes and applies to a person undertaking investment management, and to a management company, and which is able effectively to determine the manner in which voting rights attached to shares under its control are exercised (for example through instructions given directly or indirectly to a nominee or independent custodian). Case (e) provides for the voting rights which are under the control of such a person to be aggregated with those of its parent undertaking.

A person falling within Cases (a) to (h) is an indirect holder of shares for the purpose of the definition of shareholder. These indirect holdings have to be aggregated, but also separately identified in any notification to the issuer. Apart from those identified in the Cases (a) to (h), the Central Bank does not expect any other significant category of "indirect shareholder" to be identified. Cases (a) to (h) are also relevant in determining whether a person is an indirect holder of qualifying Regulation 17 financial instruments which result in an entitlement to acquire shares.

5.10 Regulation 17 Financial Instruments

Regulation 17 of the Transparency Regulations transposes the provisions of Article 13 of the Transparency Directive into Irish law. ESMA has published

on its website an indicative list of instruments subject to notification requirements under Article 13(1) of the Transparency Directive. Relevant persons should familiarise themselves with this list in order to comply with the Transparency Regulations.

Financial instruments as described in Regulation 17(1)(a) of the Transparency Regulations should be taken into account in the context of notifying major holdings, to the extent that such instruments give the holder an unconditional right to acquire the underlying shares (or the discretion to acquire the underlying shares or cash) on maturity. Consequently, financial instruments as described in Regulation 17(1)(a) should not be considered to include instruments entitling the holder to receive shares depending on the price of the underlying share reaching a certain level at a certain moment in time. Nor should they be considered to cover those instruments that allow the instrument issuer or a third party to give shares or cash to the instrument holder on maturity.

5.11 Notification of Combined Holdings

A person may have to make a notification if the overall percentage level of his voting rights remains the same but there is a notifiable change in the percentage level of one or more of the categories of voting rights held.

5.12 Notification by both the Relevant Shareholder and Proxy Holder

It may be necessary for both the relevant shareholder and any proxy holder to make a notification. For example, if a direct holder of shares has a notifiable holding of voting rights and gives a proxy in respect of those rights (such that the recipient has discretion as to how the votes are cast) then for the purposes of Regulation 14(1) to 14(4) of the Transparency Regulations this is a disposal of such rights giving rise to a notification obligation. The proxy holder may also have such an obligation by virtue of his holding under Regulation 15.

Regulation 21(4)(c) of the Transparency Regulations provides that “[i]n the circumstances referred to in Regulation 15(1) (h) if a shareholder gives the proxy in relation to one shareholder meeting, notification may be made by means of a single notification when the proxy is given provided it is made clear in the notification what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights discretion”. Such a single notification may be made by the direct holder of the shares or by the proxy holder.

Regulation 21(4)(d) of the Transparency Regulations provides that “[i]f in the circumstances referred to in Regulation 15(1) (h) the proxy holder receives one or several proxies in relation to one shareholder meeting, notification

may be made by means of a single notification on or after the deadline for receiving proxies provided that it is made clear in the notification what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights at its discretion". Such a notification should be made on or as soon as is reasonably practicable following the proxy deadline. Unless it discloses what the position will be in respect of each proxy after the proxies have expired, such a notification will not relieve any direct holder of the shares of its notification obligation (if there is a notifiable disposal).

A proxy which confers only minor and residual discretions (such as to vote on an adjournment) will not result in the proxy holder (or shareholder) having a notification obligation.

5.13 Credit Institutions and Third Country Investment Firms acting as a Market Maker

References to a market maker in Regulation 14(6) of the Transparency Regulations also include a third country investment firm (i.e. an investment firm within the meaning of Directive 2014/65/EC which has its head office outside of the EEA) and a credit institution when acting as a market maker and which, in relation to that activity, is subject to regulatory supervision under the laws of a Member State.

5.14 Market maker notifications

A notification by a market maker to the Central Bank in accordance with Regulation 14(6)(b) of the Transparency Regulations should be made using the Standard Form (TR-2) (Standard form for Notification by Market Makers) available in electronic format on the Central Bank's website [here](#).

6. Filing of regulated information with Central Bank and OAM

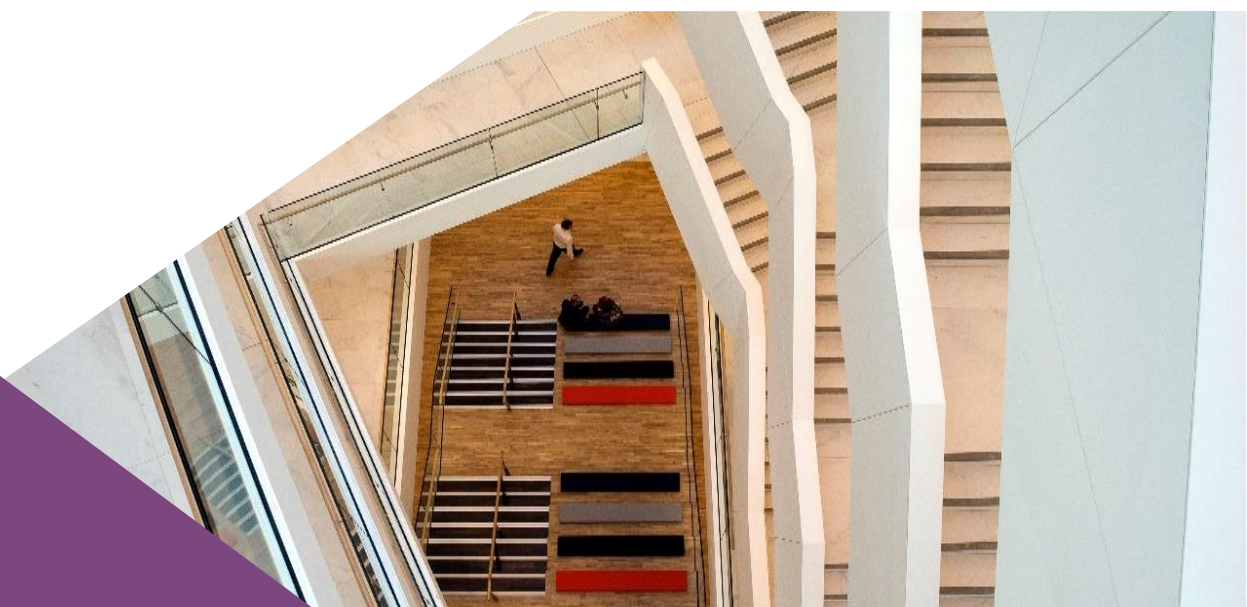
Under the Transparency Directive, regulated information, in addition to being disseminated and filed with the Central Bank, must also be stored in the Officially Appointed Mechanism (OAM). The Transparency Directive requires that there is at least one OAM for the central storage of regulated information in each Member State. Euronext Dublin operates the storage mechanism in Ireland.

All issuers whose home Member State is Ireland that disclose regulated information should make the regulated information available to Euronext Dublin in its capacity as OAM. Details of how to file regulated information with Euronext Dublin via Euronext Direct is available at <https://direct.euronext.com/Announcements>.

An issuer that disseminates its annual financial report in accordance with Regulation 33(5) of the Transparency Regulations must also file a copy of the unedited full text report with the Central Bank and with the OAM.

7. Third Country Equivalence

The Central Bank has not, to date, judged that any Third Country State has laws which lay down requirements equivalent to those imposed on issuers under the Transparency Regulations. If the Central Bank concludes that the relevant laws of any Third Country States are equivalent for this purpose, it will publish a list of such Third Country States on its website.



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