

The
Transparency
Directive
2004/109/EC

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THE TRANSPARENCY DIRECTIVE 2004/109/EC

Implementation of the Transparency Directive – Closed Ended Funds

The Transparency Directive (2004/109/EC) (the “TD”) was implemented into Irish law on 13th June 2007 by the Transparency (Directive 2004/109/EC) Regulations 2007 (the “Regulations”) and has effect from this date. The TD seeks to enhance transparency in EU capital markets in order to improve investor protection and market efficiency. The Regulations establish disclosure requirements on an ongoing basis for issuers with securities admitted to trading on a regulated market situated or operating within the EU.

The purpose of this memorandum is to provide an overview of the Directive, the Regulations and their scope, and to highlight their impact on the continuing obligations of listed closed ended funds. For the avoidance of doubt, collective investment undertakings of the open-end type are outside the scope of the TD.

In Ireland, the Financial Regulator will become the competent authority under the Regulations and will delegate specified tasks to the Irish Stock Exchange (“ISE”) for an interim period as permitted by the TD. Certain ongoing requirements currently set out in the continuing obligations section of the Listing Rules will be replaced by the provisions of the Regulations.

The new obligations imposed by the regulations are set out below:-

Disclosure of Periodic Financial Information (Regulations 4 to 9)

The following key changes for listed issuers arise under Regulations 4 to 9 which relate to the publication of periodic financial information:

(a) *Shorter reporting deadlines (Regulations 4(2) and 6(2)(b))*

Issuers are required to publish annual financial reports at the latest **four months** after the year end (currently allowed six months under the Listing Rules).

Issuers are required to publish half-yearly financial reports at the latest **two months** after the period end (currently allowed four months under the Listing Rules).

(b) *Availability of annual and half-yearly reports (Regulations 4(2) and 6(2)(c))*

There is a new requirement for issuers to ensure that annual financial reports and half-yearly financial reports remain publicly available for at least five years.

(c) *Responsibility statements (Regulations 4(3)(c) and 6(3)(c))*

There is a new requirement for issuers to include a responsibility statement in their annual and half-yearly reports. Regulation 8(5)(d) clarifies that the ‘true and fair’ view to be expressed in the responsibility statements for half-yearly reports is satisfied by including a statement that the condensed set of financial statements have been prepared in accordance with:

- (i) the international accounting standard applicable to interim financial reporting adopted pursuant to the IAS Regulation; or
- (ii) for Irish companies not using IFRS, pronouncements on half-yearly reports issued by the Accounting Standards Board; or
- (iii) for all other companies not using IFRS, a national accounting standard relating to interim reporting.

Additional disclosure requirements are also specified for annual and interim reports as set out in Rules 6.1 and 6.2 attached.

(d) *Interim management statements (Regulation 9)*

There is a new requirement for issuers with shares listed on the ISE to publish two management statements within specified periods during a financial year, containing information on:

- (i) material events and transactions that have taken place during the relevant period and their impact on the financial position of the issuer and its controlled undertakings; and

- (ii) the financial position and performance of the issuer and its controlled undertakings during the relevant period.

It should be noted that this requirement does not apply to issuers that publish quarterly financial reports.

- (e) *Civil liability regime (Regulation 12)*

Regulation 12 introduces a civil liability regime in relation to false or misleading statements in, or omissions of information from, financial information reports and statements required under Regulations 4 to 9 and 26.

Ongoing Information about Major Shareholdings

- (a) *Disclosure of major shareholding notifications (Regulations 14, 15, 17)*

The Regulations require a **shareholder to simultaneously notify a listed closed ended fund and the ISE** of the percentage of the voting rights he/she holds as shareholder or through his/her direct or indirect holding of financial instruments or a combination of such holdings when the holding reaches, exceeds or falls below 5%, 10%, 15%, 20%, 30%, 50% and 75%.

The notification requirements equally apply to any person with a direct or indirect holding of financial instruments (including derivative securities) which result in an unconditional right to acquire securities to which voting rights attach.

The Regulations and Interim Transparency Rules include specific guidance on how the aggregation of holdings and use of proxies should be considered in respect of such notifications. Please be aware that the use of proxies will be considered as disposals for the purpose of the Regulations, and notifications will be required where proxies are used.

Such notifications must be made using a form TR-1 as **soon as possible but no later than 4 trading days after the date the person becomes aware of the change in his/her voting rights.**

In addition, following receipt of such a notification from a shareholder, a listed closed ended fund is required to publicly disclose the information contained

in the notification received by filing a standard form TR-1 with the ISE as soon as possible and in any event not later than the end of the third trading day following receipt of the notification.

Any shareholders in listed closed ended funds which meet or exceed the above thresholds are required to file a form TR-1 with the fund and the ISE no later than 13th August 2007. In addition, following receipt of the above notifications from shareholders the relevant funds are also required to make the relevant TR-1 filings with the ISE by the same date.

Market makers are required to make separate notifications using standard form TR-2.

(b) Acquisition or disposal by issuer of shares (Regulation 19)

A listed closed ended fund that acquires or disposes of its own shares, either itself or through a person acting on its behalf, must publicly disclose the percentage of voting rights attributable to those shares as soon as possible, but not later than **four trading days** following the acquisition or disposal, where the percentage reaches, exceeds or falls below a 5% or 10% threshold (based on voting rights).

(c) Publication of total voting rights and capital (Regulation 20)

A listed closed ended fund must publicly disclose the total number of voting rights and capital **by 5th July 2007 and at the end of each calendar month during which an increase or decrease occurs.** This ongoing requirement will be triggered where a listed company issues or buys back shares during a calendar month.

Dissemination of Regulated Information

Under Section 5 of the Transparency Rules, there is no change to the current practice by which a listed closed ended fund discloses information to the market, i.e. direct disclosure to a Regulatory Information Service or disclosure via the Company Announcements Office of the Exchange. Disclosing regulation information in this manner also satisfies the obligation in Regulation 31 to file information with the Financial Regulator.

Communication of Amendments to Instruments to Incorporation

Any proposed changes to the instruments of incorporation of a closed ended fund must be filed with the listing department of the ISE pursuant to Rule 8.0.1.

Conclusion

This memorandum identifies some of the implications of the Regulations and, where applicable, the related Transparency Rules but does not purport to be a comprehensive explanation of all material implications of the Regulations and/or Transparency Rules.

We strongly advise that you:

- ▣ examine the requirements of the TD, Regulations and Transparency Rules in detail in order to ensure compliance with the new regime;
- ▣ consider at an early stage the impact that the Directive will have on your continuing obligation requirements; and
- ▣ consider what amendments are necessary to current systems and processes to meet the requirements of the Directive.

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