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13 REPORTING AND NOTIFICATIONS

13.1 Annual Controller's Report

The Firm is required to keep the FCA informed about the identity of its controllers.

A controller's report must currently be submitted via RegData to the FCA annually, within 4 months of the Firm's accounting reference date (financial year end). The Firm's accounting reference date is 31 March, and therefore the deadline is 31 July each year.

The report must be in the format prescribed by the FCA and contain a list of all the controllers as at the Firm's accounting reference date of which the Firm is aware, and for each controller, may need to state:

- Their or the entity's name.
- The percentage of voting power in the Firm, or – should it become relevant – a parent company undertaking which it is entitled to exercise (or control the exercise of), whether alone or with any associate.
- The percentage of shares in the Firm, or if it becomes relevant a parent company undertaking which it controls/holds as above, whether alone or with any associate.
- If the controller is a body corporate, its country of incorporation, address and registered number.
- If the controller is an individual, their date and place of birth.

A current structure chart (as at period end date) should be included with each return. If applicable, a group organisation chart might be required.

If there have been no changes in the identity of the Firm's controllers or if the Firm is not aware of any changes in the percentages of shares or voting power in the Firm held by any controllers (alone or with any associate), then the latest controller's report should confirm this.

Notwithstanding this annual reporting requirement, any significant change in control during the year would require FCA notification and possibly prior FCA clearance (see below) under SUP 11.

13.2 Annual Close Links Report

Threshold Condition 3 (Close Links) advises that if the Firm has close links with another person, the FCA must be satisfied that:

- Those close links are not likely to prevent the FCA's effective supervision of the Firm.
- Where it appears to the FCA that the person is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State, neither, the foreign provisions, nor any deficiency in their enforcement, would prevent the FCA's effective supervision of the Firm.

The Firm must submit a close links report, RegData, to the FCA annually, containing the information below, and in the format prescribed by the FCA. This must be submitted within 4 months of the Firm's accounting reference date. The deadline for submission is therefore 31 July each year.

If the Firm is not aware:

- Of any close links to the Firm or
- Of any material changes in respect of the Firm's close links since the submission of the previous report

then the report should also confirm this. An up-to-date structure chart (as at period end) showing close links should be included.

The report must contain a list of all persons with whom the Firm has close links as at the Firm's accounting reference date of which the Firm is aware, and for each such link state:

- Its name.
- The nature of the close link.
- If the close link is with a body corporate, its country of incorporation, address and registered number.
- If the close link is with an individual, their date and place of birth.

13.3 Annual Financial Crime Report

The Firm is required to submit the annual financial crime report under SUP 16.23. Firms need to provide this information to the FCA to ensure it receives information about the Firm's systems and controls in preventing financial crime.

The REP-CRIM is to be submitted via RegData to the FCA annually within 60 business days of the accounting reference date. As the Firm's accounting reference date is 31 March, the deadline is 23 June each year, beginning in 2023.

The report includes information on (amongst other things):

- Jurisdictions in which the Firm operates.
- PEPs and PEP relationships.
- High-risk jurisdiction/customers.
- SARs.
- Investigative court orders received.
- AR relationships exited due to financial crime reasons.

13.4 Notifications to the FCA

The Firm is required to complete an annual attestation of the accuracy of its FCA register details within 60 days of its accounting reference date via Connect and either confirm no changes or make appropriate changes. However, changes to such details should be made on a timely basis during the annual period in any case, normally in advance, to ensure that FCA register details remain up to date.

The Firm is also required to submit an annual attestation on Certified staff (entitled Directory persons), similarly making any changes or confirming no changes required. This is required within every 12 months and for the Firm, this is done in March each year.

Otherwise, Principle 11 includes a requirement for the Firm to disclose to the FCA anything relating to the Firm of which the FCA would reasonably expect notice. Various chapters in the FCA Handbook (SUP 11, SUP 12.7, SUP 15) also contain specific event-driven notification requirements for FCA-regulated firms. The following list is not exhaustive, and staff should refer to the Compliance Officer or SUP 15 if in any doubt.

13.4.1 Notification of Changes in Control or Close Links

- The Firm should notify the FCA (and normally in advance) about certain changes in its controlling structure (e.g. a new entity/person acquiring control, acquiring an additional kind of control or reducing/ceasing to have control).

- A new controller or a controller moving to a higher control band requires advance notification and FCA consent. This is called a s.178 notice (this being covered by s.178 of FSMA). Specified forms are required depending on the legal status of the new/increased controller.
- The FCA should also be notified immediately when the Firm becomes aware that it has become or ceased to become closely linked with any person. SUP 11 sets out more information on this.

13.4.2 Auditors

- Change of auditors.
- If a qualified audit report is expected.
- Written communication received from the Firm's auditors with regards to internal controls.

13.4.3 The Firm's Regulated Business Activities

- Any intention to vary or cease the regulated activities the Firm undertake.
- Change of the Firm's accounting reference date.
- The Firm intends to cancel its Part 4A permission.
- The Firm intends to wind down (run off) its activities.
- The Firm appoints or terminates an AR.

13.4.4 Matters Having a Serious Regulatory Impact

- The Firm not being able to maintain its capital resources requirement.
- The Firm fails to satisfy one or more of the threshold conditions, either as a result of its own actions, or that of any of its ARs.
- Legal action against any of its controllers.
- Any matter which could have a significant adverse impact on the Firm's reputation.
- Any matter which could affect the Firm's ability to continue to provide adequate services to the Firm's clients and which could result in a serious detriment to a client of the Firm.
- Any matter in respect of the Firm, which could result in serious financial consequences to the UK financial system or to other regulated firms.

13.4.5 Breaches of Rules or FSMA Requirements

- A significant breach of a rule (which includes a Principle or Statement of Principle, or a COCON rule).
- A breach of any requirement imposed by the Act (FSMA) or by regulations or an order made under the Act by the Treasury.
- The bringing of a prosecution for, or a conviction of, any offence under the Act by (or against) the Firm, controllers, or any of its staff members, or ARs.

Any breach notification should include information about any circumstances relevant to the breach or offence, identification of the rule or requirement, and any action which the Firm has taken or intends to take to rectify or remedy the breach or prevent any future potential occurrence.

The SM&CR imposes strict reporting requirements on firms for Conduct Rule breaches that result in disciplinary action. Disciplinary action in this context means:

- Issuing of a formal written warning.
- Suspension or dismissal of a person.
- Reduction or recovery of remuneration (clawback).

Where the disciplinary action is against an SMF holder, firms are required to notify the FCA within 7 business days of concluding disciplinary action using Form D (or Form C where the individual will no longer be approved).

Where the disciplinary action is against an individual other than an SMF holder, the FCA requires firms to notify annually through RegData using REP008. It is anticipated that the Firm will need to submit this report each October for the period 1 September to 31 August.

The Firm needs to make an annual notification about Conduct Rules even if there have not been any breaches to make sure it is correctly monitoring and identifying Conduct Rule breaches.

13.4.6 Civil, Criminal or Disciplinary Proceedings Against the Firm

- Civil proceedings against the Firm, whereby the amount of the claim is significant in relation to the Firm's financial resources or reputation.
- Any action that is brought against the Firm under section 71 or section 150 of FSMA (Action for damages).
- Disciplinary measures or sanctions that have been imposed on the Firm by any statutory or regulatory authority, professional organisation or trade body (other than the FCA) or the Firm becomes aware that one of those bodies has started an investigation into the Firm's affairs.
- If the Firm is prosecuted for, or convicted of, any offence involving fraud or dishonesty, or any penalties imposed on it for tax evasion.

Notification should include details of the matter and an estimate of the likely financial consequences, if any.

13.4.7 Fraud, Errors and Other Irregularities Provided they are Significant

- If the Firm become aware that a staff member may have committed a fraud against one of the Firm's clients.
- If the Firm become aware that a person, whether or not employed by the Firm, may have committed a fraud against the Firm.
- If the Firm identify irregularities in the Firm's accounting or other records, whether or not there is evidence of fraud.
- If the Firm expect that one of the Firm's staff members may be guilty of serious misconduct concerning their honesty or integrity and which is connected with the Firm's regulated activities or ancillary activities.

13.4.8 Change in Name or Address

- Change of the Firm's name or any other business name under which the Firm carry out regulated or ancillary activities either from an establishment in the UK or with or for clients in the UK (given with reasonable advance notice).
- Change in name or address of any of its ARs.
- Change in the Firm's principal place of business in the UK including date of the change (given with reasonable advance notice).

13.4.9 Change in Legal Status

- Please note, given that Part 4A permission is not transferable, a change in legal status will likely require an entirely new application to the FCA for Part 4A permission.

Notifications are, to a large extent, left to the discretion of regulated firms. However, the FCA has issued guidance as to what such notifications may comprise. The FCA expects firms to discuss relevant matters with it at an early stage, before making any internal or external commitments.

The Compliance Officer is responsible for providing any notifications from the Firm to the FCA or, in their absence, a member of the Governing Body. All information provided in a notification must be factually accurate and complete or, in the case of estimates and judgements, fairly and properly based after appropriate enquiries have been made. If the Firm becomes aware that it has or may have provided the FCA with information which was, or may have been false, misleading, incomplete, inaccurate or may have materially changed, it must notify the FCA immediately.

13.5 Major Share Holding Disclosure

DTR 5 requires shareholders to disclose holdings in certain shares once they reach, exceed or fall below defined thresholds. Special Rules, DTR 5.1.5, apply to FCA Authorised Persons that manage investments on behalf of beneficial owners.

The Firm, as an investment manager, may from time to time be obliged to disclose to both the FCA and to the issuer of the share, when relevant holdings reach, exceed or fall below the thresholds for relevant shares of UK issuers at 5% and 10% and every 1% thereafter.

13.5.1 How This Applies to Contracts for Difference

The contracts for difference (CFDs) disclosure costs apply to CFDs where the 'underlying' (i.e. the financial instrument upon which the CFD's value is determined) is admitted to trading on a UK prescribed market (i.e. UK regulated markets and AIM).

Firms have to report 'effective economic value of CFD holding' on a delta adjusted basis.

13.5.2 Definitions

- Relevant holdings – the aggregate of any voting rights held as a percentage of total voting rights conferred by that relevant share's issued share capital.
- Relevant shares – shares admitted to trading on a prescribed market (that include regulated markets, i.e. within the EEA).
- UK issuer – an issuer who is incorporated in the UK and whose shares are admitted to trading on a regulated market and their home state is the UK.
- Non-UK issuer – an issuer who is not incorporated in the UK and whose shares are admitted to trading on a regulated market and their home state is the UK.
- Regulated market – as defined by MiFID a list of regulated markets is maintained by CESR.
- Currently, prescribed markets include AIM which is the only market that is not also a regulated market.

13.5.3 Means of Disclosure

All relevant forms and checklists for Listing Transactions and Primary Market Oversight forms, including Form TR-1 (plus annex, where appropriate) for shares admitted to trading on a UK regulated market or prescribed market, are available on the FCA's website here. However, from 22 March 2021, all TR-1 notifications in relation to voting rights held in an issuer admitted to trading on a UK regulated market, must be submitted to the FCA via the major shareholdings notification portal via the FCA's electronic submission system (ESS).

To be able to submit a notification to the FCA, a relevant person (i.e. subject to notification obligations under DTR 5 and persons reporting TR-1 Forms on behalf of Position Holders (Reporting Persons) must complete a 2-step registration process on the ESS.

More information, including on the registration and form submission processes, are available on the FCA's website here.

13.5.4 Timing of Disclosure

- Shares issued by UK issuers:
    - To the issuer; as soon as possible but no later than within 2 trading days of the purchase/sale in the event the relevant holding reaches, breaches or falls below a threshold.
    - To the FCA; as soon as possible but no later than the end of the following trading day of the purchase/sale in the event the relevant holding reaches, breaches or falls below a threshold.
- Shares issued by non-UK issuers:
    - To the issuer; as soon as possible but no later than within 4 trading days of the purchase/sale in the event the relevant holding reaches, breaches or falls below a threshold.
    - To the FCA; as soon as possible but no later than the end of the second trading day of the purchase/sale in the event the relevant holding reaches, breaches or falls below a threshold.

13.5.5 Responsibility to Disclose

It is the responsibility of the Compliance Officer to make the disclosure regarding relevant major shareholdings as required by DTR 5.

13.6 Transaction Reporting

13.6.1 Transaction Reporting

SUP 17A and MiFIR Article 26 requires that a firm which 'executes' with a trading venue (i.e. regulated market, MTF, OTF or third-country trading venue) either directly or transmitted through a third party, a transaction in any reportable (as defined) financial instrument, must report the details of the transaction to the FCA in an accurate, timely and complete manner.

This only applies where the Firm is executing or managing investments either on its own behalf for 'direct' clients or any of its ARs. Therefore, it does not apply to advisory or arranging activities carried out by ARs in their own capacity as the obligation will fall on other parties to the transaction if in scope.

At present the activities of the Firm and its ARs are not in scope, as they are not being executed on any of the above 'venues' including a trading venue. Therefore, SUP 17A. does not apply to any of the Firm's or ARs' activities.

If, however, that were to change, the Firm is required to follow the procedures under SUP 17A.1 including:

- Either registering with the FCA to submit these reports directly and in line with SUP 17A.2.
- Or by way of using a third-party approved reporting mechanism (ARM) (for which FCA authorisation for that activity is required by the third party).

In practice if the Firm's activities were in scope of transaction reporting, it would appoint a recognised ARM (after appropriate due diligence) to carry out this reporting on its behalf.

Such reporting post MiFIR includes up to 65 data fields including (but not exclusive to):

- The time and date of a transaction.
- The securities involved with relevant identifiers.
- The price and volume.
- Specific identifiers on the trader/dealer/manager taking responsibility for the transaction.

All trades must be reported on a transaction date (T) +1 basis and any errors or omissions in compliance with this are required to be reported to the FCA's Market Reporting Team in line with their guidance at any given time. SUP 15 notification should also be considered on a proactive basis if the reason for a failure is due to any systemic issue.

Although the Firm may appoint an ARM to carry out reporting on its behalf, the obligation remains with the Firm regarding completeness, timeliness and accuracy of the submission. Therefore, confirmation of the successful submission from the ARM to the FCA on each and every transaction should be evidenced by the Firm as part of its audit trail on in-scope transactions. This should also include that the transaction has been carried out in line with reporting deadlines.

The FCA also encourages firms to sign up to its Market Data Portal (MDP), which enables a firm to obtain extracts of reports submitted directly from the FCA for independent sampling. Should this be required, the Firm undertakes to sign up to the MDP as part of its ongoing monitoring programme and in line with SUP 17A.2.1B.

13.7 Mandatory Notifications under the NSI Act 2021

The UK's National Security and Investment Act 2021 (NSI Act) received Royal Assent in April 2021 and came into force on 4 January 2022. The NSI Act introduced a hybrid mandatory and voluntary notification regime enabling the government to scrutinise and intervene in certain transactions and investments on national security grounds.

As set out on the government's website here, the NSI Act permits the government to impose certain conditions on an acquisition, or in rare instances, the government may unwind or block an acquisition completely.

In general, the new regime will apply to any acquisition of 'material influence' in a qualifying entity, which is widely defined as any entity other than an individual, as well as the acquisition of control over assets (including land and intellectual property), which are from, in, or have a connection to the UK, and which potentially give rise to national security concerns in the UK. It is worth noting that qualifying acquisitions that are part of a corporate restructure or reorganisation may also be covered.

The government has published a flowchart to help relevant persons decide whether an acquisition needs to be notified.

13.7.1 Mandatory Notifications

A mandatory notification from the acquirer applies to notifiable acquisitions in 17 key sectors (listed below), which are defined in the NSI Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021 (accessible here):

1. Advanced Materials
2. Advanced Robotics

3. Artificial Intelligence
4. Civil Nuclear
5. Communications
6. Computing Hardware
7. Critical Suppliers to government
8. Cryptographic Authentication
9. Data Infrastructure
10. Defence
11. Energy
12. Military and Dual-Use
13. Quantum Technologies
14. Satellite and Space Technologies
15. Suppliers to the Emergency Services
16. Synthetic Biology
17. Transport

Section 8 of the NSI Act sets out 4 cases (or trigger events) where control of a qualifying entity would require mandatory notification to the Investment Security Unit (ISU) within the Department for Business, Energy and Industrial Strategy (BEIS) and approval by the Secretary of State for BEIS before it completes:

1. The first case is where the percentage of the shares that the person holds in the entity increases:
   (a)from 25% or less to more than 25%,
   (b)from 50% or less to more than 50%, or
   (c)from less than 75% to 75% or more.
2. The second case is where the percentage of the voting rights that the person holds in the entity increases:—
   (a)from 25% or less to more than 25%,
   (b)from 50% or less to more than 50%, or
   (c)from less than 75% to 75% or more.
3. The third case is where the acquisition is of voting rights in the entity that (whether alone or together with other voting rights held by the person) enable the person to secure or prevent the passage of any class of resolution governing the affairs of the entity.
4. The fourth case, subject to section 9 of the NSI Act, is where the acquisition, whether alone or together with other interests or rights held by the person, enables the person materially to influence the policy of the entity.

13.7.2 Qualifying Acquisition of an Asset

For the purposes of the NSI Act and subject to the exceptions set out in section 11, a person gains control of a qualifying asset if the person acquires a right or interest in, or in relation to, the asset and as a result the person is able:

a) To use the asset, or use it to a greater extent than prior to the acquisition, or
b) To direct or control how the asset is used, or direct or control how it is used to a greater extent than prior to the acquisition.

Qualifying acquisitions are not subject to mandatory notification but may be subject to a ‘call in notice’.

13.7.3 Voluntary Notifications

If a qualifying acquisition is not in scope of the mandatory notification there is no legal obligation to tell the government about it. However, a voluntary notification can be submitted if a party to the transaction wants to know if the government will call it in for review.

In the case of a voluntary notification, the acquisition may continue unless the government has said otherwise through an interim order. However, if the acquisition completes before the government has made its decision, the acquisition can later be unwound if the government finds that there are national security concerns.

13.7.4 Procedure to Notify

To tell the government about a notifiable acquisition, an online mandatory notification form needs to be submitted online to the Investment Security Unit. Before a form can be submitted, registration for the online service is required. The form asks for information on the structure and share ownership of the qualifying entity, the acquirer and the acquisition. Further guidance on how to submit a notification form is here.

Two other notification forms are also available: voluntary notifications and retrospective validation application form. The latter form is for retrospective validation if a notifiable acquisition has completed without notifying. However, as set out below, an acquisition is void if a notifiable acquisition (which is subject to mandatory notification) completes without notifying and gaining approval from the government, and civil and criminal action may also result.

After a notification form has been submitted, the government will provide a case reference number and will confirm whether the form has been accepted or rejected as soon as is reasonably practicable after receiving it. The acquisition can continue to progress using the review and assessment periods up to the point of completion unless the government has issued an interim order preventing this.

If the notification form is accepted, within 30 working days the government will either:

- Clear the acquisition and confirm it can go ahead.
- Clear the acquisition to go ahead subject to certain conditions.
- 'Call in' the acquisition for a full national security assessment, which will last up to 30 days, subject to extensions of up to 45 working days.
- Require further information, which should be provided as soon as possible, to help complete the assessment (known as an 'information notice').
- Require a party or various parties involved in the acquisition to attend a meeting (known as an 'attendance notice').

More information on the assessment procedure can be found here.

13.7.5 Call in Powers

The government can assess acquisitions up to 5 years after they have taken place and up to 6 months after becoming aware of them if they have not been notified.

To avoid parties rushing through transactions, the government has reserved the right to apply the provisions of the NSI Act retrospectively for transactions completing between 12 November 2021 and 3 January 2022.

13.7.6 Enforcement

Completing a notifiable acquisition without approval will mean the acquisition is legally void and may mean that the acquirer is subject to civil or criminal penalties including up to 5 years in prison and/or a fine of up to the greater of 5% of an organisation's global turnover or £10m, whichever is the greater.

The Act also contains offences for:

- Failing to comply with an interim or final order.

- Failing to comply with an information notice or attendance order, and various associated offences.
- Using or disclosing information in contravention of disclosure of information provisions.

13.7.7 Extra-territorial effects of the NSI Act

Under the NSI Act, there are new rules that apply to certain acquisitions of entities or assets that are outside, but have a connection to, the UK.

The guidance here explains:

- What type of acquisitions outside of the UK are covered by the new rules.
- Common circumstances that would put an acquisition in scope of the new rules.
- Examples of how the rules may affect parties not based in the UK.

13.7.8 Further Information and Assistance on the NSI Act

For general enquiries or for an informal discussion around future acquisitions or a specific notification, please contact the ISU at investment.screening@beis.gov.uk.