Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2015/761. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2015 No. 761 may be subject to amendment by EU Exit Instruments made by the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 1. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Delegated Regulation (EU) 2015/761 of 17 December 2014 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2015/761

of 17 December 2014

supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC[(1)], and in particular the third subparagraph of Article 9(6b), the fourth subparagraph of Article 13(1a) and the fourth subparagraph of Article 13(4) thereof,

Whereas:

(1) Directive 2004/109/EC establishes transparency requirements relating to information about issuers whose securities are admitted to trading on a regulated market. That Directive also requires development of regulatory technical standards to ensure consistent application of the regime for notification of the acquisition or disposal of major holdings and related exemptions.

(2) The thresholds for the market making and trading book exemptions should be calculated by aggregating voting rights relating to shares with voting rights related to financial instruments (that is entitlements to acquire shares and financial instruments considered to be economically equivalent to shares) in order to ensure consistent application of the principle of aggregation of all holdings of financial instruments subject to notification requirements and to prevent a misleading representation of how many financial instruments related to an issuer are held by an entity benefiting from those exemptions.

(3) In order to provide an adequate level of transparency in the case of a group of companies, and to take into account the fact that, where a parent undertaking has control over its subsidiaries, it may influence their management, the thresholds should be calculated at group level. Therefore all holdings owned by a parent undertaking of a credit institution or investment firm and subsidiary companies should be disclosed when the total sum of the holdings reaches the notification threshold.

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(4) The disclosure regime for financial instruments that have a similar economic effect to shares should be clear. Requirements to provide exhaustive details of the structure of corporate ownership should be proportionate to the need for adequate transparency in major holdings, the administrative burdens those requirements place on holders of voting rights and the flexibility in the composition of a basket of shares or an index. Therefore, financial instruments referenced to a basket of shares or an index should only be aggregated with other holdings in the same issuer where the holding of voting rights through such instruments is significant or the financial instrument is not being used primarily for investment diversification purposes.

(5) It would not be cost-efficient for an investor to build a position in an issuer through holding a financial instrument referenced to different baskets or indices. Therefore, holdings of voting rights through a financial instrument referenced to a series of baskets of shares or indices which are individually under the established thresholds should not be accumulated.

(6) Financial instruments which provide exclusively for a cash settlement should be accounted for on a delta-adjusted basis, with cash position having delta 1 in the case of financial instruments having a linear, symmetric pay-off profile in line with the underlying share and using a generally accepted standard pricing model in the case of financial instruments which do not have a linear, symmetric pay-off profile in line with the underlying share.

(7) In order to ensure that information about the total number of voting rights accessible to the investor is as accurate as possible, delta should be calculated daily taking into account the last closing price of the underlying share.

(8) To decrease the number of meaningless notifications to the market, the trading book exemption should apply to financial instruments held by a natural person or legal entity fulfilling orders received from clients, responding to a client's request to trade otherwise than on a proprietary basis or hedging positions arising out of such dealings.

(9) The provisions in this Regulation are closely linked, since they deal with the requirements relating to notification of major holdings in listed companies. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, including investors that are non-Union residents, it is desirable to include certain of the regulatory technical standards required by Directive 2004/109/EC in a single Regulation.

(10) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(11) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(2)].

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(12) The application of this Regulation should be deferred in order to align its date of application with the date prescribed for the transposition of Directive 2013/50/EU of the European Parliament and of the Council in Article 4(1) of that Directive[(3)],

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down detailed rules for the implementation of Article 9(6b), Article 13(1a)(a) and (b) and Article 13(4) of Directive 2004/109/EC.

Article 2

Aggregation of holdings

For the purpose of calculation of the 5 % threshold referred to in Article 9(5) and (6) of Directive 2004/109/EC, holdings under Articles 9, 10 and 13 of that Directive shall be aggregated.

Article 3

Aggregation of holdings in the case of a group

For the purpose of calculation of the 5 % threshold referred to in Article 9(5) and (6) of Directive 2004/109/EC in the case of a group of companies, holdings shall be aggregated at group level according to the principle laid down in Article 10(e) of that Directive.

Article 4

Financial instruments referenced to a basket of shares or an index

1 Voting rights referred to in Article 13(1a)(a) of Directive 2004/109/EC in the case of a financial instrument referenced to a basket of shares or an index shall be calculated on the basis of the weight of the share in the basket of shares or index where any of the following conditions apply:

a the voting rights in a specific issuer held through financial instruments referenced to the basket or index represent 1 % or more of the voting rights attached to shares of that issuer;

b the shares in the basket or index represent 20 % or more of the value of the securities in the basket or index.

2 Where a financial instrument is referenced to a series of baskets of shares or indices, the voting rights held through the individual baskets of shares or indices shall not be accumulated for the purpose of the thresholds set out in paragraph 1.