

PUBLIC STATEMENT

Brexit: Clarifications on the application of the TD requirements by UK issuers with securities admitted to trading on regulated markets in the EU

The European Securities and Markets Authority (ESMA) is issuing this Statement concerning the application of transparency requirements by UK issuers with securities admitted to trading on regulated markets in the EU (hereafter, UK issuers) under Article 4 of the Transparency Directive (Directive 2004/109/EC, hereafter, TD).

Article 4(1) of the TD requires issuers with securities admitted to trading on a regulated market in the EU (EU issuers) to make public their annual financial report at the latest four months after the end of each financial year. Article 4(3) of the TD specifies the requirements concerning the disclosure of the issuers' financial statements within their annual financial reports and the accounting standards to be applied.

Following the end of the transition period on 31 December 2020, issuers with a registered office in the UK are considered in the EU as third country issuers as of 1 January 2021. Article 23(1) of the TD allows NCAs to exempt third country issuers from the obligations under Article 4 of the TD provided that the third country sets equivalent requirements. Further to the equivalence framework designed by Regulation (EC) No 1569/2007, Articles 17 and 18 of Commission Directive 2007/14/EC, which lays down detailed rules for the implementation of certain provisions of the TD, specify when a third country shall be deemed to set equivalent requirements for the purposes of Article 4(3).

In accordance with Article 29(2) of the ESMA Regulation (Regulation (EU) 1095/2010¹), ESMA is issuing this Public Statement to promote common supervisory practices among NCAs when exempting UK issuers from their TD requirements. This statement is based on European legislation, therefore, it does not take into account potential additional national provisions in relation to the exemption of TD requirements for third countries' issuers.

¹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010.

UK Issuers required by UK law to prepare consolidated financial statements

In accordance with Article 4(3), first subparagraph, of the TD, EU issuers shall draw up their consolidated accounts in accordance with Regulation (EC) No 1606/2002 (hereafter, EU IFRS), and the annual accounts of the parent company in accordance with the national law of the Member State in which the parent company is incorporated.

In order for a UK issuer to be exempted from this obligation under Article 23(1) of the TD, the NCA should verify that such UK issuer publishes:

- i) its consolidated financial statements drawn up in accordance with one of the following standards, as per Commission Regulation (EC) No 1569/2007 and Commission Decision 2008/961/EC on the use by third countries' issuers of securities of certain third country's national accounting standards and IFRS to prepare their consolidated financial statements:
 - o EU IFRS, or
 - o IFRS as issued by the IASB, as these have been declared equivalent or
 - o Third country national accounting standards deemed equivalent by the EC to EU IFRS (e.g. US GAAP, Chinese GAAP, Canada GAAP, Japan GAAP, Republic of Korea GAAP); and
- ii) the minimum information specified in Article 17 of Commission Directive 2007/14/EC (notably, for issuers of shares, dividends computation and ability to pay dividends and, for all issuers, where applicable, minimum capital and equity requirements and liquidity issues) in the consolidated financial statements of the issuer. Given that the issuer must also be able to provide the competent authority of the home Member State with additional audited disclosures giving information on the individual accounts of the issuer, for consistency purposes, NCAs are encouraged to request UK issuers to publish the annual accounts of the parent company. Those disclosures may be prepared under UK GAAP.

When reviewing the financial statements of issuers, NCAs should verify the financial reporting framework used as disclosed in the notes to the financial statements and in the audit report.

In relation to other requirements such as management reports or statements made by the persons responsible within the issuer, NCAs should verify that UK issuers comply respectively with Articles 13 and 15 of Commission Directive 2007/14/EC.

UK Issuers not required by UK law to prepare consolidated financial statements

In accordance with Article 4(3), second subparagraph of the TD, when the EU issuer is not required to prepare consolidated financial statements, it has to disclose its individual financial statements prepared in accordance with the national law of the Member State of incorporation.

In order for a UK issuer to be exempted from this obligation under Article 23(1) of the TD, the NCA should verify that such UK issuer, as per Article 18 of Commission Directive 2007/14/EC publishes its individual financial statements – which must be audited independently – drawn up in accordance with one of the following standards:

- EU IFRS, or
- IFRS as issued by the IASB, as these have been declared equivalent or
- Third country national accounting standards deemed equivalent by the EC to EU IFRS (e.g. US GAAP, Chinese GAAP, Canada GAAP, Japan GAAP, Republic of Korea GAAP).

For the purposes of equivalence, if such financial information is not in line with the above mentioned standards, the individual financial statements – which must be audited independently – must be presented in the form of restated financial statements.

When reviewing the individual financial statements of issuers, NCAs should verify the financial reporting framework used as disclosed in the notes to the individual financial statements and in the audit report.

In relation to other requirements such as management reports or statements made by the persons responsible within the issuer, NCAs should verify that UK issuers comply respectively with Articles 13 and 15 of Commission Directive 2007/14/EC.