

Clients & Friends Alert

European Commission Announces Revisions to the Transparency Directive

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Under the headline “More responsible businesses can foster more growth in Europe”, the European Commission (the “**Commission**”) unveiled proposals for directives to amend several legislative measures on 25 October 2011, including a directive to amend the Transparency Directive (the “**Amendment Directive**”)¹.

Key aspects of the proposed Amendment Directive include:

- Determining notification requirements for major shareholdings by aggregating holdings of shares with holdings of financial instruments (derivatives);
- Widening the range of financial instruments subject to a notification requirement in order to prevent ‘hidden ownership’ of listed companies;
- Abolition of the requirement for listed companies to publish interim statements and/or quarterly reports; and
- Compulsory reporting of payments made to governments by businesses in the extractive and logging industries.

Increased Notification Requirements for Major Shareholdings

The draft Amendment Directive provides for the extension of notification requirements to all instruments which have a similar economic effect to holdings of shares and entitlements to acquire shares, whether or not they create an entitlement to physical settlement. This is a legislative response to recent instances of investors acquiring controlling stakes in listed companies without having to inform the markets as a result of using financial instruments such as cash-settled derivatives.

¹ Available at http://ec.europa.eu/internal_market/securities/docs/transparency/modifying-proposal/20111025-provisional-proposal_en.pdf

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Added to this, whereas the existing Transparency Directive does not require holdings of voting rights to be aggregated with holdings in financial instruments in order to calculate when the thresholds for notification of major holdings have been triggered, the Amendment Directive would introduce such an obligation. The resulting notification will be required to include a breakdown of the holding by type of financial instrument held, in order to provide the market with the most detailed information possible.

Reduced Reporting Requirements

In an effort to streamline the requirements involved in listing on regulated markets and to encourage long-term investment, the Commission proposes to abolish the obligation for listed companies to publish interim management statements. At the same time however, the Commission has confirmed that issuers will still be permitted to publish these statements in response to strong demand from investors.

Reporting of Payments to Governments from the Extractive Industries

Under the draft Amendment Directive, listed and large² or public interest³ non-listed companies would be obliged to publish annual reports of payments made to governments in the course of business in the oil, gas, mining and logging sectors. Reports would be made on a country-by-country basis, but could also be required for specific projects. Types of payment caught by the new rule would include production entitlements, dividends, taxes on profits, and fees. It should be noted that the proposed reporting requirement would apply to all companies listed on EU regulated markets, regardless of where they are registered or incorporated.

This provision is similar to the proposals in the Dodd-Frank Act⁴, which provide that oil, gas and mining companies registered with the Securities and Exchange Commission in the United States will be required to report particular types of payments made to governments on a country-by-country and project-by-project basis. However, the Amendment Directive would in fact go further than the Dodd-Frank Act, for instance, as it impacts on large unlisted companies as well as publicly listed corporations.

² This amendment to the Transparency Directive reflects proposals to amend the Accounting Directives, which were also announced on 25 October 2011. In those proposals, (i) a large company is defined as one which exceeds two of the three following criteria: turnover of €40 million, total assets of €20 million, or 250 employees and (ii) public interest companies are as defined as in the Statutory Audits Directive.

³ Public interest entities are defined in Article 2(13) of the Statutory Audits Directive as "entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC, credit institutions as defined in point 1 of Article 1 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions and insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC. Member States may also designate other entities as public interest entities, for instance entities that are of significant public relevance because of the nature of their business, their size or the number of their employees."

⁴ The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173).

Next Steps

The Commission's version of the Amendment Directive will now pass to the European Parliament and the Council of Ministers for approval, with implementation by Member States expected to occur in 2014. In the meantime, the European Securities and Markets Authority (ESMA) will be required to publish draft non-binding guidelines and technical standards.

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