



The Association of Investment Companies

Publication and dissemination of periodic financial information

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Introduction

In implementing the EU Transparency Directive, changes have been made to the Listing Rules (“LR”) and to the Disclosure and Transparency Rules (“DTR”) relating to the publication and dissemination of periodic financial information. This paper summarises the new rules for publishing and disseminating the annual financial report, the half-yearly financial report (previously known as the interim report), the new interim management statement, and the now optional preliminary statement.

This paper also covers the requirements of the Companies Act 2006 for circulating copies of periodic financial reports to shareholders in hard copy or electronically, and for posting such reports on a website. Finally, the paper touches on the requirements for filing periodic financial information with the FSA and the registrar.

Further guidance on producing interim management statements can be found in a separate AIC paper which is available on the AIC’s website at www.theaic.co.uk.

This commentary explores the new rules on publishing and disseminating periodic financial information.

1. Who do the new publication and dissemination rules apply to?

The new DTR rules on publishing and disseminating periodic financial information apply to companies whose shares are admitted to trading on a regulated market and whose home state is the United Kingdom. We anticipate that almost all AIC Members, with the exception of companies whose shares are only traded on AIM, will have to comply with these new rules. An analysis of this conclusion is set out in Appendix 1. This paper only applies to investment companies publishing and disseminating periodic financial information under the DTR rules.

2. When are the new rules effective from?

The new DTR rules are effective for accounting periods beginning on or after 20 January 2007. Therefore, for an investment company with a year end of 31 December 2006, the new rules come into play for the accounting period starting 1 January 2008, and for an investment company with a 31 January 2007 year end, the new rules come into play for the accounting period starting 1 February 2007.

In practice, there is a transitional period when some investment companies will be on the old rules and some on the new rules in relation to publishing and disseminating periodic financial information. It is worth noting that, during this transitional period, companies which are still following these old rules will, at the same time, be subject to new DTR requirements relating to other disclosures, such as the notification of major shareholders (DTR 5) which are effective immediately from 20 January 2007.

The Companies Act 2006 replaces the Companies Act 1985, and the rules are being phased in over a period of time. However, all references to the Companies Act 2006 discussed in this paper are effective from 20 January 2007.

3. What are the new publication deadlines for periodic financial information?

The rules relating to the publication of periodic financial information have moved from the LR to the DTR, and at the same time the deadlines for publication have been shortened. The table below shows the differences between the old deadlines and the new deadlines.

Deadline from the end of the financial period to which the document relates

	Old rules	New rules
Annual financial report ¹	6 months	4 months (DTR 4.1.3R)
Preliminary announcement	120 days	N/A (See question 4 below)
Half-yearly financial report	90 days	2 months (DTR 4.2.2R)
Interim management statement	N/A ²	Between 10 weeks after the beginning, and 6 weeks before the end, of the relevant six-month period (DTR 4.3.3R) ³

¹Previously referred to as the annual report and accounts in the Listing Rules and as the annual report in the Companies Act 2006. The term annual financial report is used throughout this paper for consistency.

²Interim management statements are effective for accounting periods beginning on or after 20 January 2007.

³The FSA has previously confirmed that, where a quarterly financial report is produced which provides an exemption from publishing an interim management statement, a company does not need to follow the interim management statement reporting timetable.

4. Is it still necessary to publish a preliminary announcement?

The change in the reporting deadline for the annual financial report from six months to four months (see question 3 above) has effectively eliminated the need for the release of a preliminary announcement 120 days after the year end. For this reason, the preliminary statement is optional under the new rules, although companies can choose to continue to release a preliminary statement ahead of the 120 day deadline. However companies are now required to make a different form of announcement at the year end (see question 9 below).

Investment companies which choose not to publish preliminary announcements going forward are still required to publish inside information as soon as possible in line with the requirements of DTR 2. For example, if there is a time delay between the approval and the publication of the annual financial report, the board needs to consider whether an intermediate announcement is necessary, particularly where dividend decisions have been made.

The UKLA has stated (List! Issue 14) that, where a company continues to publish a preliminary announcement, even if only to ensure the prompt release of price sensitive information, it expects existing rules to be followed. These include rules relating to content requirements, the need for the report to be agreed with the auditors, and the disclosure of details relating to the nature of any likely modification to the audit report.

5. What does the new publication timetable look like?

The point at which the new publication rules come into effect depends upon the company's year end (see question 2). Appendix 2 shows the publication deadlines for each month year-end.

6. What happens to the publication timetable if the company's first accounting period is less or more than twelve months?

Under the Companies Act 2006, the period covered by a company's first annual financial report should be from the date of incorporation to its accounting reference date, which is automatically set as the first anniversary of the last day in the month in which the company was incorporated, but this can be changed. This period is known as the 'first accounting reference period' and may be between six months and eighteen months.

In terms of the half-yearly financial report, the Listing Rules currently contain a specific rule relating to investment trusts. LR 15.4.22 states that an investment trust which is newly admitted to listing may publish its first half-yearly financial report for a period that is either shorter or longer than six months in order to align the end of the first six-monthly reporting period with the normal reporting cycle. However, the FSA has confirmed that, since the publication of the Transparency Directive, the equivalent rules set out in the DTR take precedence over LR 15.4.22. The DTR do not contain any

specific regulations relating to the publication of half-yearly financial reports in a short or long accounting period, and therefore the general principle contained in DTR 4.2.2R, which states that the half-yearly financial report must cover the first six months of the financial year, applies. With effect from September 2007 when certain changes to Chapter 15 of the Listing Rules come into effect, LR 15.4.22 will be deleted.

There are no special regulations which deal with the timing of the interim management statement in a long or short accounting period, and therefore the same publication rules apply irrespective of the length of the accounting period.

7. In what format should periodic financial information be disseminated to the market?

Periodic financial information falls under the definition of regulated information and must be disseminated as such. Regulated information is defined as all information which a company is required to disclose under the Transparency Directive, article 6 of the Market Abuse Directive, the Listing Rules and the Disclosure and Transparency Rules. DTR 6.3 contains minimum standards for the disclosure of regulated information. As preliminary announcements are no longer mandatory (see question 4), they do not meet the definition of regulated information if disclosed voluntarily. Where a company chooses to apply an exemption from publishing an interim management statement by producing an equivalent quarterly financial report, then this equivalent quarterly financial report does meet the definition of regulated information as its disclosure is required by the DTR.

8. What mechanism should be used to disseminate periodic financial information?

As periodic financial information falls within the definition of regulated information (see question 7), under the requirements of the Transparency Directive it must be made available on a fast, non-discriminatory basis to the public in all EEA States. The FSA already has an established methodology through the Listing Rules which requires companies to issue their regulatory announcements via a Primary Information Provider ("PIP") which is approved by the FSA. These approved providers operate as Regulated Information Services providers ("RISs"). Appendix 3.1 of the Listing Rules contains a list of approved RISs. RISs have to comply with certain minimum standards, particularly in terms of security, timely distribution and ease of use. As part of the consultation process for the Transparency Directive, the FSA sought, and received, agreement that this model should continue to be used.

Therefore, investment companies are able to use the services of an RIS to disseminate their periodic financial information. However, the board should be aware that, even though the company uses the services of an RIS which has been approved by the FSA, it remains ultimately responsible for the satisfaction of certain minimum dissemination standards (which are contained in DTR 6.3.4R to DTR 6.3.8R). For example, regulated information must be "...disseminated in a manner ensuring that it is capable of being disseminated to as wide a public as possible, and as close to simultaneously as possible...".

The board therefore needs to ensure that these minimum requirements are satisfied for all company announcements containing regulated information. This is likely to include seeking assurance that the RIS has the necessary systems and controls in place to meet the minimum standards.

It is also worth noting that, under DTR 6.3.9R, an investment company must not charge shareholders any specific cost for providing the regulated information.

9. What format should the RIS announcement take?

Regulated information, which includes periodic financial information, must be “...communicated to the media in unedited full text”. There is, however, one exception to this rule, which relates to the annual financial report. It is only necessary to publish the full text of the annual financial report for the information covered in the annual financial report which would also be required in the half-yearly financial report. This is a change to the old rules, whereby the preliminary statement was used as a means of announcing the annual results. In practice, many elements of the old preliminary statement and the new style announcement of the annual results will be the same, although additional information must now be disclosed, including a description of the principal risks and uncertainties, details of certain related party transactions and the responsibility statement.

The position has also changed with regard to the half-yearly financial report, which must now be communicated in unedited full text. Previously, a company was required to notify an RIS of the publication of its half-yearly financial report as soon as possible after its approval by the board, although companies may have chosen to release the full text anyway.

The interim management statement must be released in unedited full text. The FSA has unofficially said that, where an equivalent quarterly financial report is produced, it would be acceptable for the announcement to meet the content requirements relating to the interim management statement, rather than releasing the equivalent quarterly financial report in unedited full text.

Where companies choose to release a preliminary announcement (see question 4), this should be disseminated in unedited full text.

The announcement relating to the publication of the annual financial report, the half-yearly financial report, and the interim management statement or equivalent quarterly financial report, must include an indication of which website the relevant documents are available. This could be the company's own website or a third party website, such as the manager's own website, from which the reports can be downloaded.

Regulated information must be communicated in a way which clearly states that the information is regulated, and identifies the name of the investment company, the subject matter, and the time and date that the regulated information was issued. Furthermore, the company must be able to inform the FSA of the following information if necessary: the name of the person who communicated the RIS, the security validation details, the time and date on which the information was communicated to the RIS, the medium in which the regulated information was communicated, and the details of any

embargo that the company placed on the information. The board needs to ensure that the necessary documentation is maintained by the company.

10. Should periodic financial information also be filed with the FSA?

As periodic financial information meets the definition of regulated information (see question 7), it must be filed with the FSA at the same time as being disseminated to the market. However, the FSA has stated that this requirement can be satisfied by making the RIS announcement discussed in question 8.

11. Does periodic financial information need to be filed with the registrar?

All public limited companies must send the annual financial report to the registrar within 7 months of the year end. The deadlines may differ for the first set of accounts depending on the length of the first accounting period. More guidance can be found on the Companies House website at www.companieshouse.gov.uk.

12. Does the periodic financial information need to be posted on a website?

It is a requirement of the Companies Act 2006 for the annual financial report to be made available on a website as soon as reasonably practicable, and remain there until the annual financial report for the next financial year is made available. The website must be one that is maintained by, or on behalf of, the company, and identifies the name of the investment company.

Access to the annual financial report on the website, and the ability to obtain a hard copy from the website, must not be conditional on the payment of a fee, or must be not restricted in any way (unless there is a legal or regulatory reason which makes this necessary).

In terms of making the half-yearly financial report, the interim management statement, or the equivalent quarterly financial report available on a website, the DTR require the relevant announcement to include an indication of the website on which the relevant documents can be found (see question 9).

13. What forms of periodic financial information need to be posted in hard copy to shareholders?

It is a requirement of the Companies Act (both the 1985 Act and the 2006 Act) for companies to send a copy of their annual financial report for each financial year to every shareholder, although it may be possible for the company to use electronic communications for this purpose (see question 14).

The annual financial report must be sent 21 days before the date of the meeting at which the accounts are laid. If copies are sent out over a period of days, it is the last day that the reports are sent out which is the relevant day. If the 21 day deadline is not met, it is deemed to have been met if it is so agreed by all the shareholders entitled to attend and vote at the meeting at which the annual financial report is to be laid.

The LR did require companies to either send out their half-yearly financial reports to shareholders or to insert the half-year financial report, as an advertisement, in at least one national newspaper. However, for accounting periods beginning on or after 20 January 2007, this requirement has now been dropped.

There is no requirement to post a copy of the interim management statement to shareholders.

14. Can a company use electronic communications to circulate the annual financial report?

Instead of posting a hard copy of the annual financial report to shareholders (see question 13), the Companies Act 1985 allowed a company to circulate the document electronically. This was on the assumption that certain conditions were met, including the fact that prior agreement had been obtained from the shareholder.

With effect from 20 January 2007, this part of the Companies Act 1985 was replaced by the provisions of the Companies Act 2006, which contains more stringent conditions for allowing a company to default to using a website as a means of sending the annual financial report to shareholders. For example, shareholders are required to either pass a resolution approving this practice or the company's Articles of Association must contain a provision to this effect. This is in addition to the need to seek agreement from each shareholder individually, making it clear that failure to respond is taken as agreement to the proposal. The shareholder must be given 28 days to respond, and if the shareholder does not agree, the company cannot make another request within 12 months.

The use of electronic communications to distribute information to shareholders is also covered in the DTR, which are also effective from 20 January 2007. The DTR conditions are that:

- the decision to use electronic means to communicate information to shareholders must be taken in a general meeting

- the use of electronic means must not depend upon the location of the shareholder
- identification arrangements must be put in place to identify shareholders so that they can be effectively informed of matters they are entitled to be informed of
- shareholders must be contacted in writing to request their consent, and if they do not object within a reasonable period of time, their consent can be considered to have been given
- shareholders must be able to request at any time in the future that information be conveyed in writing

The FSA has made a number of points on this subject in List! Issue 14. Firstly, it recognises that it is not ideal to have two sets of rules covering the same topic and has stated that the DTR requirements “*should be applied in a way that is consistent with those of the Companies Act*”. For example, the DTR requirements give a shareholder ‘a reasonable period of time’ to respond to a company’s request to communicate electronically, whereas the Companies Act 2006 allows 28 days. The FSA considers that a period of 28 days can be taken as a reasonable period of time.

Furthermore, the FSA has stated that, where a company has already followed the provisions of the Companies Act 1985 and obtained agreement from individual shareholders to distribute the annual financial report via a website, it will be able to continue to rely on such an agreement. Investment companies in this situation can continue with their existing practice without the need to pass a resolution or seek a change to their Articles of Association.

Another point made by the FSA is that DTR 6.1.3R requires the “equal treatment for all shareholders who are in the same position”. However, the FSA recognises that electronic communication is not possible in some jurisdictions because of legal restrictions. Where this is the case, the FSA does not consider the principle of equality to be breached.

Finally, there may be some exemptions from these rules for companies whose registered office is in a non-EEA State whose relevant laws are considered equivalent by the FSA. The AIC recommends that, where a Member believes that an exemption may apply, it seeks advice as to the practical implications of this.

Appendix 1: The scope of the DTR rules

The new DTR rules on publishing and disseminating periodic financial information apply to companies whose shares are admitted to trading on a regulated market and whose home state is the United Kingdom. The term 'regulated market' includes the main market of the London Stock Exchange but does not include AIM.

The FSA's Glossary defines Home State for the purposes of DTR as:

"the Member State chosen by the issuer from among the Member State in which the issuer has its registered office and those Member States which have admitted its securities to trading on a regulated market on their territory. The issuer may choose only one Member State as its home Member State. Its choice shall remain valid for at least three years unless its securities are no longer admitted to trading on any regulated market in the Community."

For the AIC's UK domiciled Members, it is likely that the UK will be their Home State by default, as this will be where their registered office is and their shares will normally only be admitted to trading on the London Stock Exchange.

For the AIC's non-UK domiciled Members, it is also likely that the UK will be their Home State by default. This is because the majority of the AIC's non-UK domiciled Members will have a registered office outside an EEA Member State (e.g. Guernsey, Jersey etc). Their choice of Member State will therefore be limited to the Member State(s) where their shares are admitted to trading on a regulated market, which again is likely only to be the UK.

Some Members may, however, have a choice of Home State. This may be because their registered office is based in an EEA Member State other than the UK, or because their shares are admitted to trading on more than one regulated market in the EEA.

In such cases, it should be noted that choosing a Home State as anything other than the UK does not mean that the company will be exempt from the requirement to publish and disseminate periodic financial information – it simply means that the company does not have to comply with the requirements as implemented by the FSA in DTR. It will instead have to comply with the relevant requirements under a different jurisdiction's rulebook. **The AIC strongly recommends that, where a Member believes that its Home State could potentially be a state other than the UK, it seeks advice as to the practical implications of this.**

Appendix 2: Publication deadlines for each month year-end

Accounting period beginning	First IMS	Half-yearly financial report	Second IMS	Preliminary statement	Annual financial report
1 Jan 2007 (old rules until following accounting year)	N/a	28 Sept 2007	N/a	29 April 2008	30 June 2008
1 Feb 2007	Between 12 April 2007 and 19 June 2007	30 Sept 2007	Between 10 Oct 2007 and 20 Dec 2007	Voluntary	31 May 2008
1 March 2007	Between 10 May 2007 and 20 July 2007	30 Oct 2007	Between 10 Nov 2007 and 17 Jan 2008	Voluntary	30 June 2008
1 April 2007	Between 10 June 2007 and 19 Aug 2007	30 Nov 2007	Between 10 Dec 2007 and 18 Feb 2008	Voluntary	31 July 2008
1 May 2007	Between 10 July 2007 and 19 Sept 2007	31 Dec 2007	Between 10 Jan 2008 and 19 March 2008	Voluntary	31 Aug 2008
1 June 2007	Between 10 Aug 2007 and 19 Oct 2007	31 Jan 2008	Between 9 Feb 2008 and 19 April 2008	Voluntary	30 Sept 2008
1 July 2007	Between 9 Sept 2007 and 19 Nov 2007	29 Feb 2008	Between 11 March 2008 and 19 May 2008	Voluntary	31 Oct 2008
1 August 2007	Between 10 Oct 2007 and 20 Dec 2007	31 March 2008	Between 11 April 2008 and 19 June 2008	Voluntary	30 Nov 2008
1 September 2007	Between 10 Nov 2007 and 18 Jan 2008	30 April 2008	Between 10 May 2008 and 20 July 2008	Voluntary	31 Dec 2008
1 October 2007	Between 10 Dec 2007 and 18 Feb 2008	31 May 2008	Between 10 June 2008 and 19 Aug 2008	Voluntary	31 Jan 2009
1 November 2007	Between 10 Jan 2008 and 19 March 2008	30 June 2008	Between 10 July 2008 and 19 Sept 2008	Voluntary	29 Feb 2009
1 December 2007	Between 9 Feb 2008 and 19 April 2008	31 July 2008	Between 10 Aug 2008 and 19 Oct 2008	Voluntary	31 March 2009
1 January 2008	Between 11 March 2008 and 19 May 2008	31 Aug 2008	Between 9 Sept 2008 and 19 Nov 2008	Voluntary	30 April 2009



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