NORGES BANK
INVESTMENT MANAGEMENT

05 | 2020

SHAREHOLDING DISCLOSURE – A PRACTITIONER'S PERSPECTIVE

ASSET MANAGER PERSPECTIVE

Shareholding disclosure and market transparency rules aimed at shareholders of public companies are essential to the well-functioning of financial markets, providing benefits to shareholders, listed issuers and regulatory authorities. Various types of shareholding disclosure rules exist to offer insight into the ownership levels of large shareholders and their behaviour in the market.

While providing clear benefits, some shareholding disclosure practices can bring a unique set of challenges. In this Asset Manager Perspective, we leverage our experience as a large, long-term investor in over 70 jurisdictions to discuss the practical aspects of the disclosure process from a shareholder's point of view. We outline various disclosure types and challenges associated with the disclosure process. We also address other disclosure related themes, such as securities lending and collateral, as well as interaction with market regulators. From a practitioner's perspective we discuss best practices for well-functioning disclosure regulations and processes.

Date 28/08/2020

The Asset Manager Perspective series articulates Norges Bank Investment Management's views and reflections on issues topical for the financial industry. They are not meant to be definitive; rather they are intended as timely contributions for the benefit of all market participants. The series is written by employees and is informed by our investment research and our experience as a large, long-term asset manager.

Contact information:
amp@nbim.no
www.nbim.no

ISSN2387-6255

Introduction

Well-functioning financial markets depend on disclosure regimes that provide transparency into the behaviour of shareholders and into the beneficial ownership and control structures of listed companies. Information from these disclosures benefits investors, listed issuers and market regulators. However, a disclosure regime that is onerous to investors and other stakeholders or leads to high volumes of disclosure information with limited relevance may have unintended consequences.

Global asset managers need to be cognisant of various local market disclosure rules, to be able to source and compile the data required for disclosure identification and submission, and to have the processes in place to file the required disclosure forms correctly and within the mandated time frames.

This note addresses both regulatory and practical aspects of the disclosure filing process, drawing on the experience of Norges Bank Investment Management (NBIM) submitting shareholder disclosure filings in a wide variety of markets. We discuss certain aspects of shareholding disclosure activity relating to data gathering, processing and disclosure submission, and address some of the challenges that we face during the disclosure process. From a practitioner's perspective, we find that clear and harmonised disclosure rules, data accessibility, and disclosure submission methods that facilitate automation would increase investor compliance, reduce involuntary filing errors and contribute to greater market transparency.

Types of Shareholding Disclosure Discussed

This note focuses on the following types of regulatory disclosure filings:

- **Substantial shareholding disclosures** – are required when a shareholder holding shares (or financial instruments) in a company reaches pre-defined ownership thresholds (e.g. 3%, 5%, 10%) of either a company's outstanding total voting rights, total share capital, and/or total shares outstanding in each share class. Substantial shareholding disclosure rules exist in most jurisdictions.

- **Takeover disclosures** – these are required of shareholders in companies in a takeover situation in some jurisdictions subject to the applicable rules. Takeover disclosure rules are separate from and in addition to substantial shareholder disclosure rules. Generally, disclosure of shareholding positions and transaction details is requested from investors with a holding above a given threshold (e.g. 1%, 5%) in either the bidder or the target company. Filing volumes can be high when disclosure of all transactions is required on a daily basis.

- **Sector-specific rules** – for highly regulated sectors (e.g. the financial sector), there can be specific reporting thresholds and reporting obligations in addition to what is required by the substantial shareholding disclosure rules. In some cases, pre-approval from the market/industry regulator is needed before exceeding a certain ownership threshold.

- **Issuer requests** – in certain jurisdictions, issuers can request that shareholders disclose their shareholdings directly to them. Usually, this is done through investor relations firms which have been authorised by the issuers to request shareholding information on their behalf. Issuer request disclosure volumes vary over time, typically increasing at quarter end.

Disclosures of short positions are not addressed in this note. This is primarily because NBIM does not sell short in the market and correspondingly does not have a view on the challenges associated with disclosures resulting from short selling activity.

Benefits of Shareholding Disclosure

Efficient markets utilise all relevant available information to establish market clearing security prices. This includes information from shareholding disclosure rules that facilitates insight into ownership levels and control structures of listed issuers. The 2004 EU Transparency Directive[1] states that information on major holdings in issuers 'should enable investors to acquire or dispose of shares in full knowledge of changes in the voting structure; it should also enhance effective control of share issuers and overall market transparency of important capital movements'. Thus, in addition to general market efficiency and transparency, ownership disclosure has specific benefits to investors and public companies. Moreover, increased ownership transparency helps regulators counteract market abuse, money laundering and other financial crimes.

Nevertheless, the benefits of disclosure requirements must be weighed against the costs and practical challenges of the disclosure process. Addressing these issues would help harvest the full potential of shareholding disclosure and further contribute to the well-functioning of financial markets.

1 Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

Shareholding Disclosure – A Practitioner's Perspective

Varying Rules and Regulations

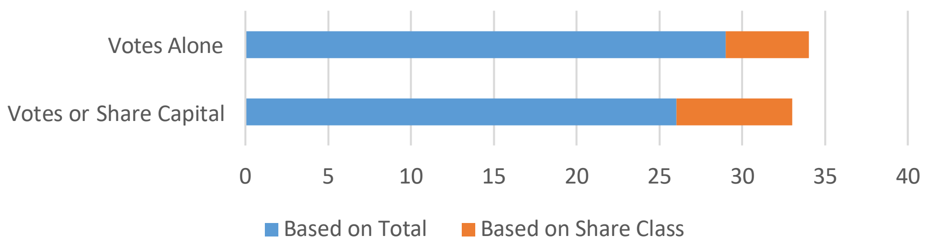
Part of the challenge of managing the disclosure process as a global asset manager are the multitude of reporting requirements – both within and across jurisdictions – that can be complex and varied. The goals of policymakers designing disclosure rules are similar across jurisdictions, and include well-functioning markets, market oversight and investor protection. In practice, however, rules differ noticeably across markets. This can present difficulties for investors operating on a global scale. In this section, we detail some of the differences. We focus on four distinct sets of rules: substantial shareholding disclosures, takeover disclosures, sector-specific disclosures, and issuer requests.

a) Rules on Substantial Shareholding Disclosures

The starting point of an investor's disclosure process is determining which jurisdiction's local rules are applicable to a given shareholding. This will be based on where an issuer is incorporated, listed, or – for European Union (EU) issuers – which country it has chosen as its 'home member state'.

Ownership calculations for substantial shareholding disclosures can be based on the total shares outstanding, the total votes outstanding, or both, and further, on an individual share class or the total of shares/votes for all share classes. For the universe of jurisdictions NBIM is reporting in, 34 base ownership calculations on votes alone, while 33 base them on votes or share capital (see Figure 1). Twelve jurisdictions base the ownership calculations on share class or voting share class, while others base it on total shares or votes.

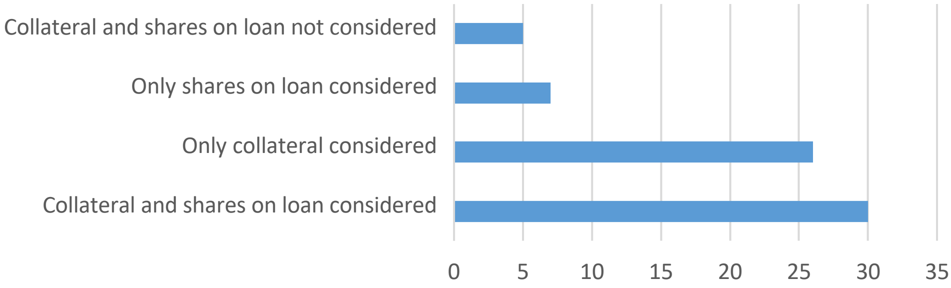
Figure 1: Ownership Calculations by Type. Source: NBIM calculations



Ownership calculations can also be affected by the inclusion of various financial instruments, shares on loan and shares received as collateral. 30 countries take collateral and shares on loan into consideration when calculating ownership levels, 26 consider only collateral received, while the rest are split between ignoring shares on loan and collateral, or only consider shares on loan[2] (see Figure 2). The inclusion of shares on loan and collateral received can increase reporting frequency, a point we return to later.

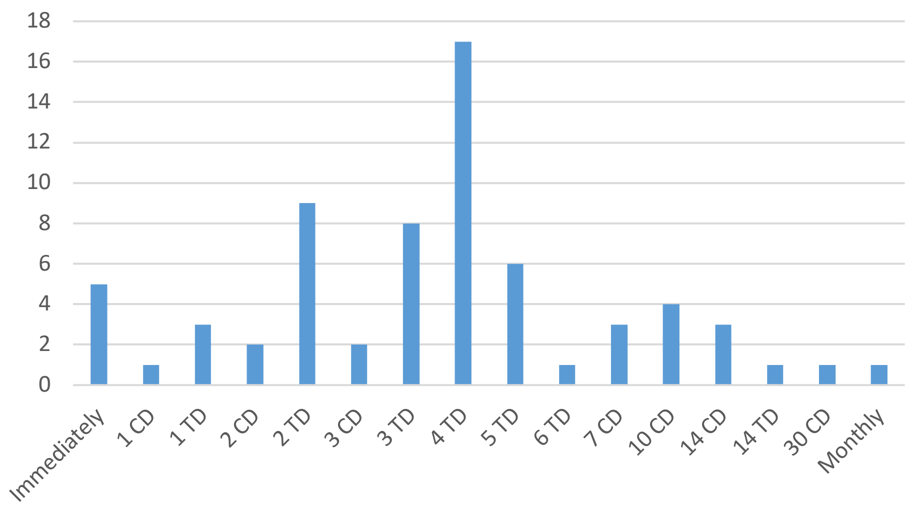
2 In this context, taking shares on loan into consideration means that shares on loan are subtracted from the ownership calculation and reducing the lender's shareholding.

Figure 2: Treatment of shares on loan and shares received as collateral. Source: NBIM calculations



The timeframe for disclosure can also vary widely. Most jurisdictions base the disclosure timeframe on trade days (TD), but some use calendar days (CD). Figure 3 shows the distribution of disclosure timeframes across our universe of jurisdictions. 2, 3, 4 and 5 trade days are the most common timeframes, but there are a significant number of jurisdictions with other timeframes that must be accounted for in a disclosure system.

Figure 3: Timeframes for Disclosure. Source: NBIM calculations

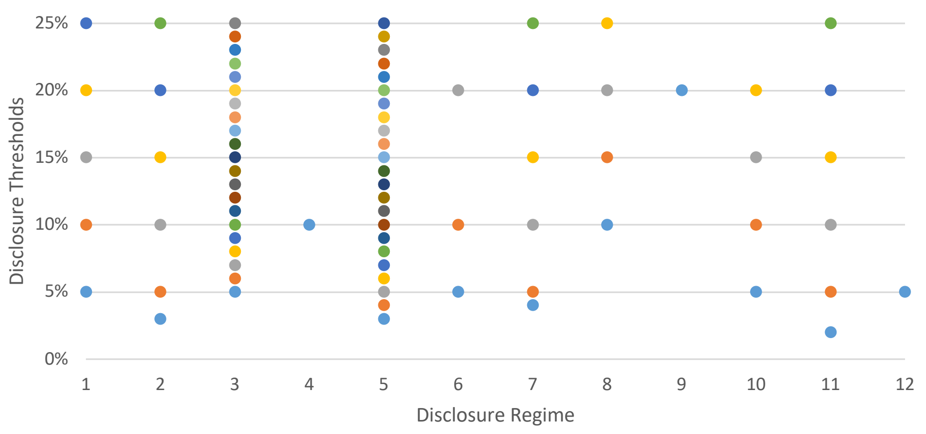


Note: 'CD' refers to Calendar Days, 'TD' refers to Trade Days.

Disclosure thresholds also vary depending on the jurisdiction. In addition, subsequent disclosures can be based either on fixed thresholds, relative thresholds (position changes since previous notification), or be required for every position change once a threshold has been crossed. For jurisdictions with disclosures based on fixed thresholds, we have identified 12 distinct threshold regimes[3], as shown in Figure 4. Regime 1, used in 18 jurisdictions, requires disclosures at 5, 10, 15, 20, and 25%. Regime 2, used in 6 jurisdictions, adds 3% to the thresholds of Regime 1. Regime 3, used in 3 jurisdictions, requires disclosures at each percentage point between 5 and 25%. These are the most common regimes. Regimes 7 to 12 are used in just one jurisdiction each. Certain jurisdictions allow listed companies to introduce disclosure thresholds in addition to those set in the country's transparency rules.

3 Disclosure thresholds greater than 25% are not taken into account in this comparison.

Figure 4: Disclosure Threshold Regimes. Source: NBIM calculations



Note: *Thresholds only reflected up to 25%.*

Taking all these disclosure regime characteristics together, we find that there are almost as many rule variations as there are jurisdictions. These all must be accounted for in the disclosure systems used by global investors, as well as in the underlying data used in those systems.

Even in cases where there have been international efforts to harmonise shareholding disclosure rules, substantial differences remain. At the EU level, even after the implementation of the revised Transparency Directive[4], member states have differed in their national transposition of the act. For example, shares received as collateral (as part of a securities lending program) are disclosable in most jurisdictions but not all. Likewise, shares placed out on loan with a right to recall are disclosable in most jurisdictions but not all. Some of the larger EU financial markets are among the exceptions in these two cases. Further, the Directive allows for supplementary and more stringent rules such as additional disclosure thresholds (including issuer-specific thresholds), and requirements to disclose holdings in shares, voting rights or both. As a result, there are still key differences in shareholding disclosure rules across European countries.

b) Rules on Takeover Disclosure

The rules on takeover disclosures are often similar across jurisdictions. A notification is generally required for every transaction (in the securities of the offeror and/or the target company) when the investor is above a certain ownership threshold. However, there are some differences. These include the ownership levels at which disclosures are required, as well as the inclusion of securities lending and collateral transactions for takeover reporting purposes.

In some cases, rules on takeover disclosure can be challenging to automate. In some jurisdictions, for example, an investor needs to be aware of its ownership in both the bidder and target companies (and potentially others) as of the start of the offer period and monitor subsequent changes in holdings in order to determine whether takeover reporting is required.

4 Directive 2013/50/EU amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

c) Sector-specific Rules

Sector-specific rules differ across jurisdictions. These rules include disclosure requirements, pre-approval requirements (requesting approval before exceeding an ownership threshold) and pre-notification requirements (sending a notification prior to crossing an ownership threshold) for issuers within a specific sector (e.g. prior authorisation requirements for banks before exceeding certain ownership levels).

Some sector-specific rules are not as detailed as substantial shareholding disclosure rules, giving rise to potentially different rule interpretations. An example would be the treatment of different financial instruments, collateral shares and shares on loan in ownership calculations.

d) Rules on Issuer Requests

Public companies or authorised third party investor relations (IR) firms can request information about an investor's shareholding if local rules allow it. The rules differ by jurisdiction, with some jurisdictions imposing an obligation on shareholders to respond to such requests and to provide shareholding and ownership information.

A practitioner's perspective:

Global investors would benefit from further simplification and harmonisation of the disclosure rules. We advocate that ownership calculations are based on total votes outstanding in an issuer (as opposed to total share capital or share class), since voting power ultimately determines control over a company. In our opinion, the initial threshold for substantial shareholding disclosures can be set at 3%, effectively increasing transparency in most instances since this is lower than the prevailing 5% threshold. At the same time, we recommend the removal of issuer-specific thresholds in favour of a standardised disclosure process. The need for issuer requests could also be reduced or phased out if public registers of listed company shareholders were made available, providing information on the beneficial ownership of the shares.

Data Accessibility

Implementing the disclosure rules across jurisdictions requires the collection of different data types. Accuracy and timeliness of the data are critical since they directly impact the output of any disclosure system. The data required can be classified as follows:

a) Shareholder Data

Shareholder data includes up-to-date holdings information for each issuer, broken down by type of securities (financial instruments) held. Ownership data by entity is also required for organisations having to aggregate holdings across subsidiaries and parent entities. Finally, up-to-date transaction information is needed, primarily for takeover reporting (security identifiers, quantity, price).

Shareholder data on positions and transactions are generally available to asset managers but not always within the timeframes required for disclosure. For large global investors, information on internally managed portfolios may need to be aggregated with data from external sources such as subsidiaries, external investment managers, and lending agents. While internal data is sourced throughout the day, externally sourced data is typically obtained at the end of the day or the next day. Disclosure systems are therefore usually based around a trade day (T) + 1 working cycle.

b) Reference Data

Reference data (or static data) for issuers and securities includes total shares outstanding, total votes outstanding, votes per share, shares outstanding per share class, conversion factors (e.g. for ADRs, warrants) for conversion into shares, and delta adjustment factors (e.g. for warrants, options). This information is needed to calculate ownership percentages. Country data, such as country of listing and country of incorporation, or home member state for EU listed issuers, is important in determining under which jurisdiction(s) disclosure is required. Timely updates to static data are required after changes resulting from corporate actions.

The sources of reference data can vary by jurisdiction. Typically, issuers are obligated to publish information such as share capital, total shares outstanding and votes outstanding. In certain jurisdictions, there is a 'golden source' for this data, such as an official share register or a publication by the financial market regulator. More commonly, third-party data providers are used to source such data. Accuracy may be compromised due to frequently changing data – such as the total number of votes or shares, or the presence of unlisted shares carrying voting rights in some European jurisdictions.

Alternative sources of easily accessible, machine-readable data, preferably containing security identifiers, may not always be available, meaning that investors need to rely on manual processes.

c) Other Disclosure-specific Data

Examples of such data are issuer-specific disclosure thresholds, lists of companies in a takeover situation (in markets where takeover disclosures are required), and other data needed in the disclosure process.

Certain markets allow issuers to introduce disclosure thresholds in addition to those set in the country's transparency rules. Such thresholds need to be considered within a disclosure system in order for an investor to comply with issuer specific reporting requirements. Issuers can change existing thresholds or introduce new ones without shareholders being informed, which can make compliance with these issuer specific reporting requirements challenging.

The same challenges apply to data on issuers in a takeover situation. Takeover disclosure rules usually require reporting of transactions by the next business day, often by a specific time. Having an efficient process in place for transposing issuers in a takeover situation into compliance systems and rules is important. Unfortunately, not all markets requiring takeover disclosures publish a list of issuers in a takeover situation. Where such lists are available, they do not always lend themselves to automatic transposition into a disclosure system.

A practitioner's perspective:
To facilitate the disclosure process, market regulators should ensure that relevant disclosure-specific data is easily accessible by investors, preferably in a machine-readable format. For instance, the provision of such data can be performed by the regulatory authority themselves or issuers can be mandated to publish relevant information on an appropriate platform.

Multiple Disclosure Form Formats

A disclosure form typically contains detailed information about the discloser, the issuer, the position details, thresholds crossed, and other data points.[5] In the absence of automation, filling out the forms can be time consuming. On a global basis, disclosure forms must be completed in multiple formats (Word, Excel, PDF, among others; some requiring a signature) as per local market rules. The variety of formats makes it challenging for investors to streamline and automate the disclosure process. With a manual process, the probability of providing erroneous information is higher.

A practitioner's perspective:
We advocate the use of disclosure forms that would facilitate automated filling and ultimately submission. For example, such forms could be Word documents that are easily filled-in and subsequently sent through an automated email, or XML files that are uploaded to an online portal, preferably via an API (application programming interface).

Submission Methods and Deadlines

The final step in the process is the submission of the disclosure within the applicable deadline.

a) Submission Methods
As with disclosure form formats, submission methods also differ greatly. Examples include email with attachment, online portal, signed document sent by courier, or a document submitted via a news distribution service. This variation hinders a streamlined and automated disclosure process and increases the associated administrative burden.

In some cases, there are additional costs associated with the submission process (e.g. using news distribution services). In a small number of markets, regulators charge a fee to investors for each submitted substantial shareholding disclosure. In other markets, the services of local legal counsel must be utilised to make a disclosure submission in the local language. In certain cases, the administrative and publication costs may fall on the issuers. Frequent disclosure notifications from an investor (resulting for instance from collateral fluctuations) may prove burdensome to the listed company.

5 For an example see the ESMA standard form for notification of major holdings at <https://www.esma.europa.eu/document/standard-form-major-holdings> last viewed May 23, 2018

b) Disclosure Deadlines
Disclosure deadlines vary as well, usually from same day to 10 business days (see Figure 3). Due to unavailability or delays of relevant data,[6] same day disclosure requirements may be challenging to meet.

Compliance with same day deadlines may necessitate manual processes and pre-trade restrictions, placing a strain on compliance departments and potentially resulting in decreased investment activity. In certain cases, operational difficulties (e.g. delays in reporting by third parties, data quality issues, system problems) may even lead to next day (T+1) reporting requirements not being met, especially when a deadline is set to earlier in the day. Fortunately, jurisdictions which previously had same day reporting requirements for substantial shareholding disclosures, have extended the reporting deadline.

A practitioner's perspective:
Investors and issuers would benefit from submission methods that lend themselves to automation and minimise the need for manual processes such as signing disclosure forms and sending via fax or courier. Ideally, authentication of the disclosing entity should be accomplished through electronic means.

A general preference would be for disclosure timeframes of 4 trade days for substantial shareholding disclosures and 1 trade day for takeover disclosures. This would provide sufficient time for compliance with the disclosure rules and at the same time allow for adequate market transparency.

Other Disclosure Related Themes

Relevance of Disclosure Notifications in the Context of Securities Lending
Shareholding disclosure delivers undisputable benefits to the well-functioning of financial markets. To achieve its goal, the information conveyed must be relevant and timely. Under the current framework, there are cases where disclosure requirements may trigger frequent notifications that have little informational value for market participants. It may be argued that high disclosure volumes of this nature may be regarded as 'noise', with the unintended consequence of reducing market transparency.

This section focuses on disclosure of securities lending and collateral transactions. The rules for disclosure of securities lending transactions differ among markets both globally and within the EU.

c) Disclosure of Shares Placed on Loan
Lending equity shares and receiving other shares in return as collateral is an integral part of securities lending and financing activities.[7] In an agency securities lending program, governed by a standard Global Master Securities

6 See section on Data requirements above.

7 Securities lending contributes to well-functioning financial markets in important ways as discussed in NBIM AMP – The Role of Securities Lending in Well-Functioning Markets.

Lending Agreement (GMSLA), legal title is transferred to the counterparty, while the lender retains the right to recall. Voting rights follow legal title, so the lender cannot vote shares that are lent out in the absence of contractual provisions to such effect.

d) Disclosure Shares Held as Collateral

For shares received as collateral, continuing with the example of an agency securities lending program, legal title is again transferred (from the borrowing counterparty to the lender).[8] While this does mean that the voting rights follow the shares, there is no process or setup for the exercise of voting rights associated with collateral shares through the agency lending arrangement or otherwise. Shares received as collateral are not normally considered part of the core investment holdings of asset managers and correspondingly there is no economic interest or intention to exercise the associated voting rights. In many cases, collateral is managed by the lending agent and the collateral recipient has no real influence on the choice of collateral securities (other than agreeing on a collateral pool) or on the timing of receipt and return of collateral shares.

A practitioner's perspective:

The disclosure of lending transactions and shares placed on loan does not generally lead to increased market transparency or contribute to the functioning of markets. While the lender cannot exercise the voting rights of the shares while they are out on loan, they remain part of its long-term shareholding and the right to recall retains a sufficient level of control over the shares. Share lending volumes vary based on market demand and do not reflect a shareholder's investment or trading strategy. Consequently, the market may receive high volumes of seemingly random disclosure notifications.

The revised transparency directive in the EU addresses this for substantial shareholding disclosures by treating shares on loan as a financial instrument and requiring separate disclosure. While overall disclosure volumes are not reduced, the market remains informed of a shareholder's total ownership level.

We argue that disclosure of collateral holdings and transactions, where the investor has little control over shares received as collateral and no intention or ability to exercise any associated voting rights, does not contribute to increased market transparency for either substantial shareholding or takeover disclosures. Rather, such notifications might overwhelm issuers, regulators and market participants with a large volume of disclosure notifications. Costs and overhead are increased for all parties. Also, in many cases it is not evident from the disclosure form that a shareholding change is due to collateral, thereby leading to a decrease in transparency about the investor's actual holdings and intentions.

8 For securities finance transactions, equity collateral is typically managed in a triparty structure under a transfer of title arrangement. However, recent industry initiatives are exploring the potential use of the pledge structure to alleviate the reporting burden and [dis-] information challenges associated with transfer of title.

In principle, there is no strong case against the reporting of securities lending and collateral transactions. In our view, however, these should be independent of ownership level disclosure obligations such as substantial shareholding and takeover disclosure.

Interaction with Financial Market Regulators

Financial regulators act for the benefit of both individual investors and the financial market as a whole. Constructive dialogue between regulatory authorities and market participants can provide insight into the application of relevant regulations. These insights might lead to changes to rules and administrative practices, as well as the resolution of potential compliance failures. At the same time, maintaining open dialogue with local market regulators would allow investors to remain abreast of regulatory developments, interpretation of certain rules, and evolving market practices. Therefore, we welcome increased two-way dialogue with regulators as part of formal consultation process and on an ad hoc basis when opportunities arise.

Further, we find that certain issues stemming from the implementation and application of regulations can be resolved more easily through direct communication between regulators and investors. In the case of shareholding disclosure, systems failures and inaccurate or incomplete data can lead to a delay in disclosures, for example. In such cases, direct and efficient contact between regulators and shareholders would help resolve issues quickly and ensure compliance with the rules, ultimately resulting in better functioning financial markets.

Conclusion

Shareholding disclosure rules provide an important contribution to well-functioning financial markets. In general, the rules achieve their objective of increased transparency. Satisfying the requirements of the rules in an efficient way, particularly for large global investors, is of key importance. From our asset management experience, the disclosure process would benefit when the following elements are present:

- **Harmonised disclosure rules** that lend themselves to efficient capture in disclosure and reporting systems, facilitating automation and avoiding manual processes. Simplifying and harmonising disclosure rules across markets in a way that also attempts to minimise excessive disclosure notifications would be beneficial. So would providing more detail and clarity on takeover disclosure and sector-specific rules, and specifically which financial instruments/shares on loan/collateral are includable in ownership calculations.

- **Availability of data** required in the disclosure process (e.g. lists of issuers in a takeover situation, issuer specific thresholds, etc.). It is important that such data is made available in a machine-readable format allowing automation. Relevant data could be provided by the regulatory authorities themselves, while issuers can be mandated to publish certain information via an accessible platform.

- **Streamlined disclosure forms** that are easy to fill out, either in a document format or as an electronic form. Disclosure forms catering to automated filling and submission work best. Requiring handwritten signatures on disclosure forms should be avoided in favour of alternative equally reliable means.

- **Efficient submission method** for disclosure forms, allowing for automated submission, such as email or upload of an XML file through an API.

- **Achievable disclosure deadlines** allowing investors the time required to collect the data for the disclosure process. For substantial shareholding disclosures we find the 4-trading day deadline set in the Transparency Directive Amending Directive (Directive 2013/50/EU) appropriate; for takeover disclosures, a deadline of 1 trading day would be appropriate.

- **Financial market regulators and investors that are open to two-way** dialogue, allowing for discussion relating to the regulatory framework and local practices, enabling the resolution of issues as they arise.

We believe that having the above elements in place increases the ease of compliance with disclosure rules, reduces disclosure costs to investors, minimises errors through elimination of manual processes, and improves the provision of timely and relevant information to financial market participants.