

Book II - Issuers and financial disclosure

Title II - Periodic and ongoing disclosure obligations

Chapter III - Ongoing disclosure

Section 2 - Crossing of shareholding thresholds, declarations of intent and changes of intent

Sub-section 1 - Major shareholdings

Paragraph 1 - Common provisions

General regulation of the AMF

Article 223-12 into force since 28 August 2008

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Article 223-12

I. - Pursuant to Point 2° of Part II of Article L. 233-9 of the Commercial Code, the following shall not be treated as shares or voting rights held by the person required to provide the notification provided for in Part I of Article L. 233-7 of the aforementioned code: equities held in a portfolio managed by an investment service provider controlled by that person within the meaning of Article L. 233-3 of the Commercial Code in connection with an asset management service, if the provider is able to exercise the voting rights attached to these equities only on the instructions of its client or if it provides assurance that the asset management business is conducted separately from all other activities.

II. - Application of Part I of this Article and Point 1° of Part II of Article L. 233-9 of the Commercial Code shall be subject to the immediate submission of the following information to the AMF by the person required to provide the notification:

- 1 • The list of the management companies or investment service providers, citing their competent supervisory authorities or, failing that, that no authority is responsible for their supervision, but without mentioning the issuers concerned;

- 2 • A statement to the effect that the person required to provide the notification complies with the requirements of this article for each management company or investment service provider concerned.

Said person shall keep the list mentioned in Point 1° up to date.

III. - The person mentioned in Part II must be able to prove to the AMF at its demand that:

- 1 • The person's organisational structures, along with those of the management company or the investment service provider, are set up in such a way that the provider exercises the voting rights independently and that the provider and the person required to provide the notification have established procedures and rules of conduct aimed at preventing the disclosure of information about the exercise of voting rights between said person and the management company or investment service provider;
- 2 • The persons who set the procedures for exercising voting rights shall act independently;
- 3 • If the person mentioned in Part II is a customer of the management company or the provider or if said person holds a share of the assets managed by the provider, there shall be a written agency agreement clearly establishing a mutually independent relationship between said person and the management company or the investment service provider.

IV. - The provisions of Article L. 233-9 of the Commercial Code shall not apply if the management company or the investment service provider is able to exercise voting rights only on the direct or indirect instructions of the person required to provide the notification mentioned in Point I the aforementioned Article L. 233-7 or of any other person controlled by that person within the meaning of the aforementioned Article L. 233-3.

For the purposes of this paragraph:

- 1 • "Direct instruction" shall mean any instruction given by the person required to provide the notification or any person controlled by that person within the meaning of Article L. 233-3 of the Commercial Code, stipulating how the management company or the investment service provider should exercise the voting rights under given circumstances;
- 2 • "Indirect instruction" shall mean any general or specific instruction given in any form by the person required to provide the notification or any person controlled by that person within the meaning of Article L. 233-3 of the Commercial Code that limits the discretion of the management company or the investment service provider in the exercise of the voting rights in order to serve the commercial interests of the person required to provide the notification or the controlled person.

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