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Law on disclosure of major holdings in issuers whose shares are admitted to trading on a regulated market and laying down miscellaneous provisions

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In accordance with Article 331, first paragraph, of the Royal Decree of 3 March 2011 (Belgian Official Gazette, 9 March 2011), the words “Banking, Finance and Insurance Commission” and the word “CBFA” shall be replaced by the words “Financial Services and Markets Authority” and the word “FSMA” respectively.

TITLE I

General provisions

Article 1.

This Law regulates a matter as referred to in Article 78 of the Constitution.

Article 2

This Law is intended chiefly to transpose into Belgian law Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

Furthermore, Articles 46 to 56 also transpose some provisions of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) and of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and abrogating Council Directive 93/22/EEC;

As regards the provisions of Part II, this Law can be cited under the title 'Law on disclosure of major holdings'.

TITLE II

Disclosure of major holdings

CHAPTER I

Definitions

Article 3

§ 1. For the purposes of Title II and its implementing decrees and regulations, the following definitions shall apply:

1° "issuer": without prejudice to the application of Article 5, second paragraph, any [legal entity] governed by private or public law:

§ 1, 1° amended by Article 23, a) of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

a) whose shares are admitted to trading on a regulated market; or

b) as referred to in § 2;

2° "regulated market": any Belgian or foreign regulated market as defined in [Article 3, 5° or 9°, of the Law of 21 November 2017];

§ 1, 2° amended by Article 140, a) of the Law of 21 November 2017 – Belgian Official Gazette, 7 December 2017

3° "Belgian regulated market": any Belgian regulated market as defined in [Article 3, 8°, of the Law of 21 November 2017];

§ 1, 3° amended by Article 140, b) of the Law of 21 November 2017 - Belgian Official Gazette, 7 December 2017

[4° "multilateral trading facility" or "MTF": an MTF as defined in Article 3, 10°, of the Law of 21 November 2017;]

§ 1, 4° replaced by Article 140, c) of the Law of 21 November 2017 – Belgian Official Gazette, 7 December 2017

5° "control": control within the meaning of Articles 5 and 7 of the Companies Code;

6° "controlled undertaking": an undertaking, irrespective of its legal status or the law by which it is governed, which is controlled by [a natural person or a legal entity];

§ 1, 6° amended by Article 23, b) of the Law of 27 June 2016 - Belgian Official Gazette, 1 July 2016

[7° "controlling person": the natural person or legal entity which controls an undertaking, irrespective of the legal status of the latter or the law by which it is governed;]

§ 1, 7° replaced by Article 23, c) of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

8° "parent undertaking": the undertaking which controls another undertaking, irrespective of the legal status of the latter or the law by which it is governed;

9° "management company": a company that manages undertakings for collective investment as defined in Article 138 of the Law of 20 July 2004 on certain forms of collective management of investment portfolios, as well as any other company as defined in Article 1a(2) of Directive 85/611/EEC;

10° "market maker": a person who holds him/herself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his/her proprietary capital at prices set by him/her;

11° "undertakings for collective investment other than of the closed-end type": undertakings constituted in accordance with contract law (common investment funds managed by management companies), trust law (unit trusts) or statute (investment companies):

a) the object of which is the collective investment of capital provided by the public and which operate on the principle of risk spreading; and

b) the units of which are, at the request of their holders, repurchased or redeemed, directly or indirectly, out of the assets of those undertakings. Any action taken by such undertakings to ensure that the value of their units which are admitted to trading, whether or not on a regulated market, does not significantly vary from their net asset value shall be considered as equivalent to such repurchase or redemption;

12° "units of an undertaking for collective investment": the securities issued by an undertaking for collective investment and representing rights of the unit holders over its assets;

13° "persons acting in concert":

a) [the natural persons or legal entities] acting in concert within the meaning of Article 3, § 1, 5°, a), of the Law of 1 April 2007 on takeover bids;

§ 1, 13°, a) amended by Article 23, d) of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

b) [the natural persons or legal entities] that have concluded an agreement to adopt, by the exercise in concert of their voting rights, a lasting common policy towards the issuer in question;

§ 1, 13°, b) amended by Article 23, d) of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

[c) ...]

§ 1, 13°, c) abrogated by Article 23, e) of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

14° "agreement to act in concert": an agreement as defined in 13°, [a) or b)];

§ 1, 14° amended by Article 23, f) of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

15° "by electronic means": by means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies or other electromagnetic means;

16° "person subject to a notification requirement": [a natural person or legal entity] that must make a notification pursuant to Title II of this Law;

**§ 1, 16° amended by Article 23 of the Law of 27 June 2016 – Belgian Official Gazette,
1 July 2016**

17° "securities holder": [a natural person or legal entity] that holds or has held securities, directly or indirectly, in an issuer as referred to in Article 5 or Article 19;

**§ 1, 17° amended by Article 23, g) of the Law of 27 June 2016 – Belgian Official Gazette,
1 July 2016**

18° "credit institution": an undertaking within the meaning of Article 4(1) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions;

19° "FSMA": Financial Services and Markets Authority;

20° "Directive 85/611/EEC": Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

21° "Directive 93/6/EEC": Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions;

22° "Directive 2004/39/EC": Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and abrogating Council Directive 93/22/EEC;

23° "Directive 2004/109/EC": Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC;

24° "Companies Code": the Companies Code introduced by the Law of 7 May 1999;

25° "Law of 2 August 2002": the Law of 2 August 2002 on the supervision of the financial sector and on financial services;

26° "Law of 16 June 2006": the Law of 16 June 2006 on public offers of investment instruments and admission of investment instruments to trading on a regulated market.

[27° "Regulation (EC) No 2273/2003": Commission Regulation No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments;

28° "Regulation (EU) No 596/2014": Regulation ((EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC;

29° "ESMA": the European Securities and Markets Authority as established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010;

30° "formal agreement": an agreement that is binding under the applicable law;

31° "legal entity": a legal person, a registered undertaking without legal personality or a trust.]

§ 1, 27°, 28°, 29°, 30° and 31° inserted by Article 23, h) of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

[§ 2. For the purposes of Title II and of its implementing decrees, a legal entity governed by private or public law that has issued shares shall also be considered an "issuer" if depository receipts representing these shares are admitted to trading on a regulated market, whether or not those shares are admitted to trading on a regulated market and even if the said depository receipts are issued by another natural person or legal entity.]

§ 2, first subparagraph replaced by Article 23, i) of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

The provisions pertaining or referring to shares or voting securities shall also apply to the depository receipts admitted to trading on a regulated market which represent those shares or voting securities.

The holder of depository receipts admitted to trading on a regulated market and representing voting securities shall be considered, for the purposes of Title II of this Law and of its implementing decrees, as the holder of the underlying voting securities.

§ 3. The King shall determine, upon the recommendation of the FSMA, what is to be understood by trading day.

CHAPTER II

Purpose

Article 4

Title II lays down rules for the disclosure of information on major holdings in issuers whose shares are admitted to trading on a regulated market.

However, Title II does not apply to the holding, acquisition or disposal of units of undertakings for collective investment other than of the closed-end type.

The King may, upon the recommendation of the FSMA, extend wholly or partially the application of Title II to major holdings in issuers whose financial instruments are admitted to trading or are traded on an MTF, and may determine that certain provisions of decrees implementing Title II shall apply wholly or partially to the said holdings. The King may to that end adapt the rules laid down in Title II or in its implementing decrees to the specifics of the MTF in question.

When exercising the power conferred upon him by this Article, the King may, where appropriate, lay down specific rules for certain types of issuer, for certain types of MTF and for individual MTFs that he designates.

CHAPTER III

Holdings in issuers whose home Member State is Belgium

Section 1

Issuers to whom this chapter applies

Article 5

[This chapter shall apply to holdings in issuers that have their registered office in Belgium or that have their registered office in a country outside the European Economic Area [and for which Belgium is the home Member State pursuant to Article 10, § 3, of the Law of 2 August 2002 and its implementing decrees.]]

first paragraph replaced by Article 50 of the Law of 17 July 2013 (Belgian Official Gazette, 6 August 2013) and amended by Article 24 of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

The provisions of this Chapter which pertain or refer to an issuer apply exclusively to the issuers referred to in the first paragraph.

Section 2

Obligations of holders of major holdings

Subsection I

Notification requirement

Article 6

§ 1. [Any natural person or legal entity] that directly or indirectly acquires voting securities in an issuer shall notify the issuer and the FSMA of the number and proportion of the issuer's existing voting rights that he/she/it holds as a result of the acquisition, where the voting rights attached to the holder's voting securities reach 5% or more of the total number of existing voting rights.

§ 1, first subparagraph amended by Article 25, 1° of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

Notification is also required in the event of the direct or indirect acquisition of voting securities where, as a result of that acquisition, the number of voting rights reaches or exceeds 10%, 15% or 20%, and so on, by increments of 5 percentage points, of the total number of existing voting rights.

Such notification is also required in the event of direct or indirect disposal of voting securities where, as a result of the disposal, the proportion of voting rights held falls below one of the thresholds set out in the first or second subparagraph.

§ 2. When shares of an issuer are first admitted to trading on a regulated market, such notification shall be made by [any natural person or legal entity] that, at that time, directly or indirectly holds voting securities of that issuer, where the voting rights attached to the voting securities represent 5% or more of the total number of existing voting rights

§ 2 amended by Article 25, 2° of the Law of 27 June 2016 - Belgian Official Gazette, 1 July 2016

§ 3. Such notification is required where, as a result of events changing the breakdown of voting rights, the proportion of the voting rights attached to the directly or indirectly held voting

securities reaches, exceeds or falls below the thresholds set out in § 1, even if there has been no acquisition or disposal.

The notification shall be made on the basis of the information disclosed by the issuer pursuant to Article 15.

§ 4. Such notification is required [where natural persons or legal entities] conclude, modify or terminate an agreement to act in concert if, as a result, the proportion of the voting rights that are the subject of the agreement, or the proportion of the voting rights held by a party to the agreement, reaches, exceeds or falls below one of the thresholds laid down in § 1, even if there has been no acquisition or disposal.

§ 4, first subparagraph amended by Article 25, 3° of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

[...]

§ 4, second subparagraph abrogated by Article 25, 4° of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

However, the notification to be made to the issuer need not include the name of a natural person where, not counting the voting securities held by the other parties to the agreement to act in concert, said natural person directly or indirectly holds voting rights which do not reach either the proportion referred to in § 1, first subparagraph, or a lower proportion in accordance with Article 18, § 1, second subparagraph, and the said person's holding in the issuer in question is less than 3% of the voting securities.

§ 5. For the purposes of this Article, a [natural person or legal entity] shall be deemed to indirectly acquire, dispose of or hold voting securities in an issuer:

1° where voting securities are acquired, disposed of or held by a third party that acts on behalf of that [natural person or legal entity], regardless of whether or not the third party is acting in its own name;

2° where voting securities are acquired, disposed of or held by an undertaking controlled by that [natural person or legal entity];

or 3° where that [natural person or legal entity] acquires or disposes of the control of an undertaking that holds voting securities in an issuer.

For the purposes of the first subparagraph, voting securities that are acquired, disposed of or held by a third party, by a controlled undertaking or by an undertaking whose control is being acquired or disposed of shall also include voting securities that are the subject of an agreement to act in concert which they have concluded. However, the notification to be made to the issuer also need not include the name of a natural person where, not counting the voting securities held by the other parties to the agreement to act in concert entered into by a third party or undertaking mentioned in the first subparagraph, the said natural person directly or indirectly holds voting rights which do not reach either the proportion referred to in § 1, first subparagraph, or a lower proportion in accordance with Article 18, § 1, second subparagraph, and where the said person's holding in the issuer in question is less than 3% of the voting securities.

Where a third party acts in its own name but on behalf of another [natural person or legal entity]; the notification requirement laid down in this Article shall also apply to that third party.

§ 5 amended by Article 25, 5° of the Law of 27 June 2016 - Belgian Official Gazette, 1 July 2016

[§ 6. For the purposes of Title II, with the exception of Article 15, and the decrees implementing Title II, the following shall be considered equivalent to voting securities:

1° financial instruments that, on maturity, give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to the right to acquire already issued voting securities;

2° financial instruments that do not fall within 1° but that are linked to the voting securities referred to in 1° and whose economic effect is similar to that of the financial instruments referred to in 1°, whether or not they confer a right to a physical settlement.

For the purposes of the first subparagraph, the following financial instruments shall be considered equivalent financial instruments, provided they satisfy the conditions set out in the first subparagraph, 1° or 2°:

a) transferable securities;

b) options;

c) futures;

d) swaps;

e) forward rate agreements;

f) contracts for differences;

g) any other contracts or agreements with equivalent economic effects which may be settled physically or in cash.

Such equivalence also applies to depository receipts not admitted to trading on a regulated market that represent voting securities, provided they confer on their holder the unconditional right or the discretion as to the right to acquire the issued voting securities which they represent.

Where the holder's right to acquire the underlying voting securities depends only on an event that the holder is able to bring about or prevent, that right is considered unconditional.]

§ 6 replaced by Article 25, 6° of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

[§ 7. The King shall, upon the recommendation of the FSMA, determine the specific procedures for the notification requirement referred to in §§ 4 and 5.]

§ 7 replaced by Article 25, 7° of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

Article 7

The notification rules as referred to in Article 6 shall also apply where [a natural person or legal entity] directly or indirectly, within the meaning of Article 6, § 5, acquires or disposes of voting rights or is entitled to exercise these voting rights, in any of the following cases or a combination thereof:

First subparagraph amended by Article 26 of the Law of 27 June 2016 - Belgian Official Gazette, 1 July 2016

1° an agreement providing for the temporary transfer for consideration of voting rights;

2° a pledge of voting securities as collateral, provided the pledgee controls the voting rights;

- 3° a right of usufruct in voting securities, provided the usufructuary controls the voting rights;
- 4° a deposit of voting securities, provided the custodian can exercise the voting rights at its discretion in the absence of specific instructions from the securities holders;
- 5° a proxy, provided the proxy holder can exercise the voting rights at his/her/its discretion in the absence of specific instructions from the securities holders.

The same rules shall apply where the situations referred to in the first paragraph are modified or terminated except, under the conditions laid down by the King upon the recommendation of the FSMA, in the event of termination of the situation referred to in the first paragraph, 5°.

The King shall determine, upon the recommendation of the FSMA, which persons are subject to a notification requirement in the situations referred to in the first subparagraph and in the case of securities held in joint ownership.

Subsection II

Calculation of the proportions of voting rights

Article 8

The proportions of voting rights referred to in Article 6 are calculated as follows:

- 1° for the purposes of Article 6, § 1, or of Article 7, on the day of the acquisition or disposal;
- 2° for the purposes of Article 6, § 2, on the day of the admission to trading on a regulated market;
- 3° for the purposes of Article 6, § 3, on the day of the event changing the breakdown of voting rights;
- 4° for the purposes of Article 6, § 4, on the day of the conclusion, the modification or the termination of the agreement to act in concert.

Such calculation shall take into account the number of existing voting rights as evidenced by the information disclosed by the issuer pursuant to Article 15.

Article 9

§ 1. For the calculation of the proportions of voting rights referred to in Article 6:

1° voting securities shall be taken into consideration in proportion to the number of existing voting rights which they confer; [...]

§ 1 amended by Article 27, a) of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

2° the voting rights attached to voting securities shall be taken into consideration notwithstanding the possibility that the exercise thereof is suspended.

[3° financial instruments equivalent to voting securities will be included, in accordance with the more specific rules laid down by the King.]

***§ 1, 3° inserted by Article 27, b) of the Law of 27 June 2016 – Belgian Official Gazette,
1 July 2016***

§ 2. For the calculation of the proportions of voting rights referred to in Article 6, the holdings of [a natural person or legal entity] referred to in Article 6 shall be aggregated with the holdings referred to in Article 7.

§ 2 amended by Article 27, c) of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

§ 3. For the calculation of the proportions of voting rights referred to in Article 6:

[1° the holdings, referred to in Articles 6 and 7, of a third party acting on behalf of another natural person or legal entity shall be aggregated with the holdings of that other person or entity, regardless of whose name that third party is acting in;

2° the holdings, as referred to in Articles 6 and 7, of a controlling natural person or legal entity shall be aggregated with the holdings referred to in Articles 6 and 7 held by the undertakings controlled by said person or entity;

3° persons acting in concert shall aggregate the voting rights that are the subject of their agreement;]

§ 3, first subparagraph, 1°, 2° and 3° replaced by Article 27, d) of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

[4° the holder of financial instruments considered as equivalent to voting securities shall aggregate all equivalent financial instruments relating to the same issuer. Only long positions shall be taken into account. Long positions are not offset with short positions in the same underlying issuer.]

§ 3, first subparagraph, 4° inserted by Article 27, e) of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

For the purposes of the first subparagraph, 1° and 2°, the holdings of a third party or of a controlled undertaking shall include the voting rights that are the subject of an agreement to act in concert concluded by said third party or controlled undertaking.

Subsection III

Exemptions

Article 10

§ 1. The notification requirement shall not apply to voting securities acquired for the sole purpose of clearing and settlement within three trading days after the transaction.

§ 2. The notification requirement shall not apply to custodians holding voting securities in their custodian capacity, provided such custodians can exercise the voting rights attached to such securities only under instructions given in writing or by electronic means.

§ 3. The notification requirement shall not apply to the holding, acquisition or disposal, by a market maker acting in its capacity of a market maker, of a shareholding reaching, exceeding or falling below the 5% threshold or, as the case may be, a lower threshold provided for in the articles of association in accordance with the decrees implementing Article 18, provided that the said market maker:

1° is authorized by its home Member State under Directive 2004/39/EC; and

2° does not intervene in the management of the issuer and does not exert any influence on the issuer with a view to urging the issuer to buy such voting securities or to back their price.

The King shall, upon the recommendation of the FSMA, lay down the procedure to be followed by the market maker to benefit from the exemption referred to in the first subparagraph, as well as the control mechanisms to which the market maker is subject.

§ 4. Voting rights held in the trading book, [as defined in Article 4, paragraph 1, 86° of Regulation No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012,] of a credit institution or an investment firm shall not be taken into account in the calculation of the voting rights held, provided that:

§ 4, title amended by Article 101 of the Law of 25 April 2014 (Belgian Official Gazette, 7 May 2014)

1° the voting rights held in the trading book do not exceed 5%; and

[2° the voting rights attached to voting securities held in the trading book are not exercised or otherwise used to intervene in the management of the issuer.]

§ 4, 2° replaced by Article 28, 1° of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

[§ 4bis. During the stabilization period, the notification requirement does not apply to voting rights attached to shares acquired for stabilization purposes in accordance with Regulation (EC) No 2273/2003 or with Article 5 of Regulation (EU) No 596/2014, provided the voting rights attached to the said shares are not exercised or otherwise used to intervene in the management of the issuer.]

§ 4bis inserted by Article 28, 2° of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

§ 5. Articles 6 and Article 7, first paragraph, 2°, shall not apply to voting securities provided to or by members of the European System of Central Banks (ESCB) in carrying out their functions as monetary authorities, including voting securities provided to or by members of the ESCB under a pledge or repurchase or similar agreement for liquidity granted for monetary policy purposes or within a payment system.

The exemption referred to in the first subparagraph shall apply to the above short-term transactions, provided that the voting rights attached to such voting securities are not exercised.

Article 11

§ 1. A controlled undertaking shall be exempted from making the notification required by law if the notification is made by its parent undertaking or, where the parent undertaking is itself a controlled undertaking, by its own parent undertaking.

§ 2. The parent undertaking of a management company shall not be required to aggregate the holdings under Articles 6 and 7 with the holdings managed by the management company under the conditions laid down in Directive 85/611/EEC, provided such a management company exercises its voting rights independently from the parent undertaking

However, Article 9, § 3, first subparagraph, 2°, shall apply where the parent undertaking, or an undertaking controlled by the parent undertaking, has invested in holdings managed by such a management company and the management company has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent undertaking or an undertaking controlled by the parent undertaking.

§ 3. The parent undertaking of an investment firm authorized under Directive 2004/39/EC shall not be required to aggregate its holdings under Articles 6 and 7 with the holdings which such an

investment firm manages on a client-by-client basis within the meaning of Article 4(1), point 9, of Directive 2004/39/EC, provided that:

1° the investment firm is authorized to provide such portfolio management on the basis of point 4 of Section A of Annex I to Directive 2004/39/EC;

2° it may exercise the voting rights attached to such voting securities only under instructions given in writing or by electronic means, or it ensures, by putting into place appropriate mechanisms, that individual portfolio management is conducted independently from any other services and under conditions equivalent to those provided for under Directive 85/611/EEC; and

3° the investment firm exercises its voting rights independently from the parent undertaking.

However, Article 9, § 3, first subparagraph, 2°, shall apply where the parent undertaking, or an undertaking controlled by the parent undertaking, has invested in holdings managed by such an investment firm and the investment firm has no discretion to exercise the voting rights attached to such holdings but may exercise such voting rights only under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking

§ 4. Upon the recommendation of the FSMA, the King shall clarify the conditions of independence to be complied with by management companies and their parent undertakings or by investment firms and their parent undertakings for the purposes of §§ 2 and 3. Likewise, he shall lay down the procedure to be followed to benefit from this exemption and determine what is to be understood by direct or indirect instructions for the purposes of §§ 2 and 3.

§ 5. Undertakings whose registered office is in a state outside the European Economic Area and which would have required authorization in accordance with Article 5(1) of Directive 85/611/EEC or, with regard to portfolio management, in accordance with Section A(4) of Annex I to Directive 2004/39/EC if they had their registered office or, only in the case of an investment firm, their head office within the European Economic Area, shall also be exempted from aggregating holdings with the holdings of their parent undertaking under the requirements laid down in §§ 2 and 3 provided that they comply with equivalent conditions of independence as management companies or investment firms.

The King shall establish, upon the recommendation of the FSMA, whether a third country is deemed to have set equivalent conditions of independence and what procedure must be complied with to be able to make use of the exemption referred to in the first subparagraph.

Sub-section IV

Time, contents and form of the notification

Article 12

The notification shall be effected [promptly], but not later than four trading days [...] following the date on which:

first paragraph amended by Article 29 of the Law of 27 June 2016 - Belgian Official Gazette, 1 July 2016

1° the person subject to a notification requirement learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect;

2° in the case referred to in Article, 6, § 2, the shares are traded for the first time on a regulated market;

3° the person subject to a notification requirement is informed, in accordance with Article 15, of the event referred to in Article 6, § 3;

4° in the case referred to in Article 6, § 4, the agreement is concluded, modified or terminated;

5° in respect of holdings acquired by inheritance, the inheritance is accepted, where appropriate under benefit of inventory.

The King shall determine, upon the recommendation of the FSMA, the conditions in which, having regard to the circumstances, a person shall be deemed to have learnt of an acquisition or disposal or of the right to exercise voting rights.

Article 13

The King shall determine, upon the recommendation of the FSMA, the content of the notifications to be made. He may also determine, upon the recommendation of the FSMA, the form of the notifications.

Upon the recommendation of the FSMA, the King shall also lay down the specific rules for filing the notifications with the issuer and with the FSMA.

Section 3

Obligations of issuers

Article 14

Without prejudice to the application of the legislation on the disclosure of inside information, an issuer that has received a notification shall, no later than three trading days thereafter, make public all the information contained in the notification.

By way of derogation from the first paragraph, an issuer that itself makes a notification of the holding, acquisition or disposal of own holdings as referred to in Articles 6 and 7 shall make this holding, acquisition or disposal public not later than four trading days after the event triggering the notification requirement.

The King shall, upon the recommendation of the FSMA, lay down specific rules governing the disclosure of information as well as the rules governing the storage of the information disclosed.

Issuers governed by Belgian law shall indicate, in the notes to their annual financial statements relating to the capital, their shareholder structure at the date of the closure of accounts, as evidenced by the notifications received

Article 15

§ 1. Notwithstanding the application of the legislation governing the publication of inside information, the issuer shall also disclose the total capital, total number of voting securities and voting rights, as well as the number of voting securities and voting rights per category, no later than at the end of each calendar month in which one of these amounts rose or fell.

Whenever it makes the disclosure referred to in the first subparagraph, the issuer shall also indicate the total number of bonds convertible into voting securities and of rights, whether of not embodied in securities, to subscribe to voting securities that have not yet been issued, of the total

number of voting rights that can be obtained by exercising conversion or subscription rights, and the total number of shares without voting rights.

When disclosing the information referred to in the first and second subparagraphs, the issuer shall at the same time file this information with the FSMA.

§ 2. Where shares of an issuer are first admitted to trading on a regulated market, a similar disclosure to the public and filing of information with the FSMA shall be made on the day on which the shares are first traded on the regulated market.

§ 3. The King shall, upon the recommendation of the FSMA, lay down specific rules governing the disclosure of the said information and specific rules governing its storage as well as its filing with the FSMA.

Article 16

The FSMA may exempt issuers whose registered office is in a country outside the European Economic Area from the requirements under Articles 14 and 15, as well as from the requirement to notify the holding, acquisition or disposal of own holdings as referred to in Articles 6 and 7, where the number of voting rights held reaches, exceeds or falls under certain percentages, provided that the law of the third country in question lays down equivalent obligations.

[The FSMA shall then inform ESMA of the exemption granted.]

2nd paragraph inserted by Article 51 of the Law of 17 July 2013 (Belgian Official Gazette, 6 August 2013)

This exemption may not, however, be applied to the rules governing the disclosure and storage of information or the filing of information with the FSMA.

Where an issuer is exempted from the requirement under Article 15, persons subject to a notification requirement shall nevertheless not be exempt from their own obligations, in particular under Articles 6, § 3, 8 and 12.

The King shall determine, upon the recommendation of the FSMA, the conditions under which the law of a third country shall be deemed to lay down equivalent obligations.

Section 4

Language regulation

Article 17

The notifier may draw up his or her notification in Dutch, in French or in a language customary in the sphere of international finance.

Where its shares are admitted to trading on a Belgian regulated market, the issuer shall disclose all the information contained in the notification as referred to in Article 15 in Dutch or in French, in compliance with any legal rules applicable under Belgian law, or, if no such rules apply, in Dutch, in French, or in a language customary in the sphere of international finance

By way of derogation from the preceding paragraph, the issuer who receives a notification in a language customary in the sphere of international finance may always disclose all the information contained in the notification in that same language.

Where none of the issuer's shares are admitted to trading on a Belgian regulated market, the issuer shall disclose all the information contained in the notification, as well as the information

referred to in Article 15, in Dutch, in French or in a language customary in the sphere of international finance

Section 5

Rules contained in the articles of association

Article 18

§ 1. The articles of association of an issuer governed by Belgian law may stipulate that the provisions of Articles 6 to 17 of this Law also apply to smaller proportions than those laid down in Article 6, § 1, first subparagraph, or to proportions that are intermediate in relation to those laid down in Article 6, § 1, first and second subparagraphs.

The articles of association may only provide for the proportions 1%, 2%, 3%, 4% and 7.5%.

An issuer that makes use of the above-mentioned possibility shall disclose the proportions provided for in the articles of association and, at the same time, notify the FSMA of said proportions.

The King shall, upon the recommendation of the FSMA, lay down specific rules governing the disclosure of the said information and specific rules governing its storage as well as its filing with the FSMA.

Articles 23 and 24 shall apply accordingly.

§ 2. Where proportions as referred to in § 1 are entered in the articles of association, securities holders as referred to in Articles 6 and 7 shall notify these holdings in accordance with the provisions of Title II of this Law and of its implementing decrees if the voting rights they hold reach or exceed the proportions provided for in the articles of association at the time when they are entered into the said articles of association. The notification shall be made not later than ten trading days following the disclosure, by the issuer, of the proportions entered in the articles of association, whether or not there has been an acquisition or disposal.

CHAPTER IV

Holdings in issuers whose shares are admitted to trading on a Belgian regulated market but whose home Member State is not Belgium

Section 1

Issuers to whom this chapter applies

Article 19

This chapter shall apply to the issuers not referred to in Article 5 and whose shares are admitted to trading, exclusively or not, on a Belgian regulated market

Section 2

Language regulation

Article 20

All the information contained in the notification shall be made public in Dutch, French or a language customary in the sphere of international finance, according to the choice made by [the natural person or legal entity] who makes the notification public.

1st paragraph amended by Article 30 of the Law of 27 June 2016 - Belgian Official Gazette, 1 July 2016

In Belgium, the information referred to in the applicable national law adopted pursuant to Article 15 of Directive 2004/109/EC shall be disclosed in Dutch, French or a language customary in the sphere of international finance.

Section 3

Precautionary measures

Article 21

Where the FSMA finds that a holder of shares in an issuer as referred to in Article 19, or an issuer as referred to in Article 19, has committed irregularities or infringed its obligations under Directive 2004/109/EC, it shall refer its findings to the competent authority of the home Member State as defined in Directive 2004/109/EC [and to ESMA].

1st paragraph amended by Article 31 of the Law of 27 June 2016 - Belgian Official Gazette, 1 July 2016

If, despite the measures taken by the competent authority of the home Member State pursuant to Directive 2004/109/EC, or because such measures prove inadequate, the holder of shares in an issuer as referred to in Article 19, or an issuer as referred to in Article 19, persists in infringing the relevant legal or regulatory provisions, the FSMA shall after informing the competent authority of the home Member State and, except in case of urgency, after enabling the shareholder or issuer concerned to formulate comments in the manner and within the time period determined by the FSMA, take all appropriate measures in order to protect investors. In particular, the FSMA may take the measures specified in Articles 23 and 24, on the understanding that it may take these measures on account of non-compliance by the issuer with the legal or regulatory provisions of the home Member State. The FSMA shall at the earliest opportunity inform the European Commission [and ESMA] of the measures taken.

second paragraph amended by Article 52 of the Law of 17 July 2013 (Belgian Official Gazette, 6 August 2013)

Section 4

Obligations incumbent on issuers whose securities are admitted to trading exclusively on a Belgian regulated market

Article 22

Issuers as referred to in Article 19 whose shares are admitted to trading exclusively on a Belgian regulated market shall disclose the notifications that they receive or are required to make under the applicable national law transposing Directive 2004/109/EC, as well as the information that

they are required to disclose under the applicable national law transposing Article 15 of Directive 2004/109/EC, in accordance with specific rules to be laid down by the King upon the recommendation of the FSMA.

The said issuers shall at the same time file such notifications and information with the FSMA in accordance with specific rules to be laid down by the King upon the recommendation of the FSMA.

CHAPTER V

Powers of the FSMA

Article 23

§ 1. The FSMA is responsible for supervising compliance with Part II of this Law and its implementing decrees.

§ 2. For the purposes of its supervision task referred to in § 1, the FSMA has the right to:

1° require an issuer, its senior management or the persons that control or are controlled by such issuer, to order it to disclose the information that must be provided or disclosed under Title II or its implementing decrees and, if necessary, to provide further information and documents;

2° order an issuer to make public the information referred to under 1° in the manner and within the time period it shall determine;

3° order securities holders, the senior management of such holders, or the persons that control or are controlled by such holders, to submit the information required under Title II of this Law or its implementing decrees and, if necessary, to provide further information and documents;

4° require a person subject to a notification requirement to make this notification in accordance with Title II and its implementing decrees;

5° carry out on-site inspections and expert appraisals within the Belgian territory, take cognizance of and copy, on site, any document, file and recording, and have access to any IT system in order to verify compliance with the provisions of Title II and of its implementing decrees;

6° require the [market operators] of the regulated markets, the financial intermediaries as defined in Article 2, 9°, of the Law of 2 August 2002 and their principals to provide it with all information, documents and items it considers necessary to fulfil its task.

The persons who intervene successively in the transmission of the orders or in the execution of the transactions concerned, as well as their principals, shall be subject to the same obligation;

7° suspend trading on a Belgian regulated market for a maximum of ten days at a time, by means of a request thereto to the relevant [market operator], if it has reasonable grounds for suspecting that the provisions of Title II or of its implementing decrees have been infringed by the issuer;

8° prohibit trading on a Belgian regulated market, by means of a request thereto to the [relevant market operator], if it finds, or has reasonable grounds for suspecting, that the provisions of Title II or of its implementing decrees have been infringed.

***§ 2 amended by Article 141 of the Law of 21 November 2017 – Belgian Official Gazette,
7 December 2017***

§ 3. Financial intermediaries as referred to in § 2, 6° shall give advance notice to the person at whose request or on whose behalf they are acting that their action is subject to their being authorized to disclose to the FSMA the identity of the final beneficiary of the transaction.

Where the provisions of the preceding paragraph are not complied with, the intermediary shall not execute the transactions.

§ 4. When applying § 2, 2°, the FSMA asks the issuer to provide its comments, in particular about its reasons for not disclosing the information, within the term the FSMA specifies. After expiry of the term it has specified, the FSMA may itself proceed, at the issuer's expense, to publish that information.

§ 5. The FSMA may impose on any person who fails to comply, within the time period it has determined, with an order addressed to the person under § 2, a penalty which shall not be more per calendar day than EUR 50,000 nor more than EUR 2,500,000 for a failure to comply with the same order or prohibition.

Article 24

§ 1. The FSMA may make public the fact that an issuer or a person subject to a notification requirement is not complying with one or more of its obligations under Title II or its implementing decrees.

§ 2. In particular, it shall notify the issuer or person subject to a notification requirement of its opinion and request that the issuer or person provide comments within the term the FSMA specifies, where the FSMA deems that:

1° a notification should have been made;

2° a notification that it received is not compliant with one of the provisions of Title II or its implementing decrees;

3° a notification threatens to mislead the public; or

4° a notification does not meet the requirements arising from title II or its implementing decrees.

After the expiry of the term it has specified, the FSMA may publish a warning, at the expense of the issuer or the person subject to the notification requirement, in the manner that it shall determine. Where the FSMA deems it appropriate, that warning may, in order to take account of the said issuer or person's comments, be at variance with the FSMA's initial standpoint.

CHAPTER VI

Cooperation among authorities

Article 25

§ 1. Whenever necessary for the purpose of carrying out their duties and making use of their powers, whether set out in Directive 2004/109/EC or in national law adopted pursuant to this Directive, the FSMA shall cooperate with those authorities of the other Member States of the European Economic Area which are competent for the application of the provisions laid down under Directive 2004/109/EC.

§ 2. For the purposes of § 1, the FSMA may, in respect of the substantive points indicated in the request by the foreign authority:

1° order the persons referred to in Article 23 as well as the persons indicated in the request by the foreign authority to provide information and documents;

2° carry out on-site investigations and expert appraisals on the premises of the issuers in question, take cognizance of and copy, on site, any document, file, and recording, and have access to any IT system.

The persons concerned shall submit the information and documents referred to in the first subparagraph within the time period and in the form determined by the FSMA.

Article 23, § 5 shall apply.

§ 3. For the purposes of § 1, the FSMA may, upon a duly justified request from the foreign authority:

1° suspend trading on a Belgian regulated market for a maximum of ten days at a time, by means of a request made to this effect to the relevant [market operator], if the foreign authority has reasonable grounds for suspecting that the provisions of the legislation of the country concerned have been infringed;

2° prohibit trading on a Belgian regulated market, by means of a request made thereto to the relevant [market operator], if the foreign authority finds, or has reasonable grounds for suspecting, that the provisions of the legislation of the country concerned have been infringed.

§ 3 amended by Article 141 of the Law of 21 November 2017 – Belgian Official Gazette, 7 December 2017

[CHAPTER VI/1

Sanctions]

Chapter inserted by Article 8 of the Law of 23 March 2019 – Belgian Official Gazette, 4 April 2019

[Article 25/1

No one may exercise more voting rights at the general meeting of a company whose registered office is in Belgium than the number of voting rights attached to the securities the he or she has notified, in accordance with the above provisions, at least twenty days before the general meeting. The voting rights attached to those securities will be suspended.

The first paragraph shall not apply:

1° to securities with associated voting rights representing less than 5% of the total number of voting rights on the date of the general meeting, or that are of a below the proportion stipulated in the articles of association as the notification threshold in accordance with Article 18;

2° to securities with associated voting rights that lie between two successive thresholds of five points, as referred to in Article 6, § 1, or between two successive thresholds as determined in the articles of association in accordance with Article 18;

3° to securities subscribed by exercising a priority right, to securities acquired by succession or as a result of a merger, split or liquidation, or to securities acquired as part of a public acquisition offer issued in accordance with the provisions of the Law of 1 April 2007 on takeover bids; and

4° to securities for which a notification was made by a proxy holder, in application of Article 7, first paragraph, 5° on condition that the proxy(ies) in question or the holder has either made a notification for the voting securities in question before the date of the general meeting, or is itself not required to make a notification for the voting securities in question.]

***Article inserted by Article 9 of the Law of 23 March 2019 – Belgian Official Gazette,
4 April 2019***

[Article 25/2

§ 1. Where the notifications required pursuant to this law have not been made in the prescribed form and within the set time periods, the president of the commercial court for the judicial district in which the company has its registered office, acting in summary proceedings, may:

1° suspend the exercise of all or part of the rights attached to the securities in question for a period of maximum one year;

2° for the period he or she shall determine, suspend a general meeting that has already been convened;

3° order the sale of certain securities to a third party not related to the current shareholder, within a period he or she shall determine and that may be extended.

§ 2. The procedure shall be initiated by means of a summons issued by the company or by one or more voting shareholders. Where the subject of the request is the suspension of a general meeting that has already been convened, the procedure may also be initiated by the person whose securities are the subject of a request or decision to suspend all or part of the rights attached to the securities in question.

As regards the subject of the request for suspension, in accordance with paragraph 1, 1°, of all or part of the rights attached to the securities in question, if a notification is made, it must, on pain of inadmissibility, be submitted at the latest fifty days after the signing of the notification.

The president of the court may allow the measures he or she ordered to be lifted upon the request of one of the interested parties and after the persons who brought the case before him as well as the company have been heard.]

***Article inserted by Article 10 of the Law of 23 March 2019 – Belgian Official Gazette,
4 April 2019***

CHAPTER VII

Criminal sanctions and administrative fines

Article 26

The following are liable to a term of imprisonment of between one month and one year, and to a fine of between EUR 50 and EUR 10,000, or to one of these penalties alone:

1° anyone who knowingly and deliberately fails to make the notifications required of them in accordance with the provisions of Title II of this Law or who knowingly and deliberately makes an incorrect or incomplete notification; and

2° anyone who refuses to provide the FSMA with the information which he or she is required to provide pursuant to Article 23 or who knowingly and deliberately provides incorrect or incomplete information.

The provisions of Book I of the Criminal Code shall, without exception of Chapter VII and Article 85, apply to the offences punishable under Title II.

[Article 27

Without prejudice to other measures laid down by this Law, the FSMA may, where it discovers an infringement of the provisions of Title II of this Law or of its implementing decrees and regulations, impose an administrative fine on the offender and, if the latter is a legal entity, on one or more members of its administrative or management or supervisory body and on any other individual who is responsible for the day-to-day management of the legal entity.

In the case of natural persons, the fine referred to in the first paragraph shall not be more than 2,000,000 euros for the same action or set of actions. Where the infringement resulted in the offender obtaining a capital gain or avoiding a loss, this maximum may be increased to twice the amount of the profits gained or losses avoided.

In the case of legal entities, the fine referred to in the first paragraph shall not be more than 10,000,000 euros for the same action or set of actions or 5 per cent of the total annual turnover, if the latter amount is higher. Where the infringement resulted in the offender gaining a profit or avoiding a loss, this maximum may be increased to twice the amount of the profits gained or losses avoided.

For the purposes of the third paragraph, the annual turnover is determined on the basis of the last available annual accounts drawn up by the board of directors or management body. If the legal entity in question does not generate any turnover, “total annual turnover” is to be understood to mean all income corresponding to turnover, either in accordance with the applicable European accounting directives or, if these do not apply to the legal entity in question, in accordance with the domestic law of the Member State in which that entity has its registered office. Where the legal entity is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts, the relevant total turnover shall be the total annual turnover according to the last available consolidated annual accounts drawn up by the board of directors or management body of the ultimate parent undertaking.

Article replaced by Article 32 of the Law of 27 June 2016 – Belgian Official Gazette, 1 July 2016

Article 28

The penalties and fines imposed in application of Articles 23, § 5, and 27 shall be recovered in favour of the Treasury by the Land Registry, Public Records and Crown Lands Office.