

In case of discrepancies between the French and the English text, the French text shall prevail.

Luxembourg, 22 June 2016

To all the persons concerned

CIRCULAR CSSF 16/638

Re: Update of Circular CSSF 08/349 relating to details regarding the information to be notified with respect to major holdings in accordance with the Law of 11 January 2008 on transparency requirements for issuers

Ladies and Gentlemen,

1. The aim of this circular is to amend Circular CSSF 08/349 by taking into consideration the amendments introduced by the Law of 10 May 2016 transposing Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.
2. Circular CSSF 08/349 shall be amended in accordance with Annex 1 to this circular.

The annex in question includes the changes made by this circular to Circular CSSF 08/349 in track changes in order to make the reading and comprehension easier. For your convenience, a “clean” version has been added as Annex 2.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Françoise KAUTHEN

Director

Simone DELCOURT

Director

Claude MARX

Director General

Annex 1; Annex 2

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

In case of discrepancies between the French and the English text, the French text shall prevail.

Luxembourg, 22 June 2016

To all the persons concerned

CIRCULAR CSSF 08/349

as amended by Circular CSSF 16/638

Re: **Details regarding the information to be notified with respect to major holdings in accordance with the Law of 11 January 2008 on transparency requirements for issuers, as amended**

Ladies and Gentlemen,

We are pleased to follow-up on Circular CSSF 08/337 of 6 February 2008 on the Law and Grand-ducal Regulation of 11 January 2008 on transparency requirements for issuers, as amended (hereinafter referred to as the “Law” and the “Grand-ducal Regulation”, respectively) and Commission Delegated Regulation (EU) 2015/761 of 17 December 2014.

In accordance with the provisions of Article 11(1) of the Law, the CSSF defines the content and form of the notification required pursuant to Articles 8 and 9 of the Law. The purpose of this circular is to introduce the standard form to be used for such a notification, the standard form to be used by the issuer for the disclosure of the total number of voting rights and capital under Article 14 of the Law, as well as the form to be filed with the CSSF by a market maker seeking to benefit from the exemption provided for under Article 8(4) of the Law and in order to comply with the requirements laid down in Article 7 of the Grand-ducal Regulation. Moreover, it presents the different cases that may arise in the context of Article 9 of the Law¹ and provides details on certain specific financial instruments referred to in Article 12 of the Law.

¹ These provisions only apply to the persons entitled to acquire or dispose of voting rights attached to shares of an issuer whose home Member State is Luxembourg in accordance with the Law. By analogy, the persons who are entitled to acquire or dispose of voting rights attached to shares of an issuer whose home Member State is not Luxembourg, shall comply with the rules applicable in the respective home Member States.

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The requirements as regards information concerning major holdings apply to shareholders², including the holders of depositary receipts representing shares³ (as for example GDRs, FDRs, etc.), and to issuers of shares⁴, including to issuers of underlying shares of depositary receipts⁵. Any reference to shares made in the explanations below shall be understood, within the limits laid down in Articles 8 to 14 of the Law, as including a reference to depositary receipts representing shares.

It should be kept in mind that the provisions of the Law only apply to issuers whose securities are admitted to trading on a regulated market⁶. Moreover, they do not apply to units issued by collective investment undertakings other than the closed-end type, or to units acquired or disposed of in such collective investment undertakings.

In addition to the details included in this circular, practical details are also set forth in the Questions and Answers published by ESMA on 22 October 2015 (ESMA/2015/1595) and the FAQ relating to the Law and Regulation published on the CSSF website.

1. Standard forms

The different forms to be used for the notifications required by the Law are appended to this circular.

a. Form to be used for the notification of the acquisition or disposal of major holdings

Article 8 of the Law sets out the thresholds that trigger the requirement to notify the proportion of voting rights held by a natural or legal person (the “persons”) in the capital of an issuer as a result of the acquisition or disposal of shares to which voting rights are attached. The thresholds laid down by the Law are: 5%, 10%, 15%, 20%, 25%, 33 1/3%, 50% and 66 2/3%. A notification requirement is triggered when one or several thresholds are crossed in the cases provided for in Articles 8, 9, 12 or 12a of the Law. For a general description of the notification requirements of the shareholders and issuers of shares whose home Member State is Luxembourg, reference is made to Circular 08/337.

For the purposes of a notification as mentioned above, the relevant persons shall use the form in ANNEX A of this circular by complying with the following rules:

- The relevant persons are required to provide information for each point of the form of the annex. In case a point is not applicable or the number of voting rights is equal to zero, a mention hereto shall be made in the form.

² Regardless of whether all or part of the issuer’s shares are admitted to trading on a regulated market.

³ Regardless of whether or not the underlying instrument is admitted on a regulated market.

⁴ Cf. note 2.

⁵ Cf. note 3.

⁶ Regardless of whether all or part of the issuer’s shares are admitted to trading on a regulated market and as regards issuers of securities represented by depositary receipts, regardless of whether or not the underlying instrument is admitted on a regulated market.

- The persons referred to in Articles 8 and 9 of the Law, i.e. the shareholders and persons entitled to acquire, to dispose of, or to exercise voting rights in any of the cases (or a combination of them) referred to in Article 9 of the Law, shall indicate this information in table A under point 7 of this annex⁷.
- The persons referred to in Article 12 of the Law, i.e. the holders of specific financial instruments shall indicate this information in tables B 1 and B 2 under point 7 of this annex. It should be noted that for table B 2, a distinction should be made between financial instruments which confer a right to a physical settlement and financial instruments which confer a right to a cash settlement.
- The persons referred to in Article 12a of the Law⁸ shall provide details on the breakdown of voting rights in tables A, B 1 and B 2 under point 7.

Deleted: use the form included in ANNEXE A appended to this circular. In these cases, the persons concerned shall fill out, in particular,

It should be stressed that pursuant to Article 12a(2) of the Law, the voting rights attached to specific financial instruments, which have already been notified, shall be notified again when the natural person or the legal entity has acquired the underlying shares and such acquisition results in the total number of voting rights attached to shares issued by the same issuer reaching or exceeding one or several above-mentioned thresholds.

Where the proportion of voting rights held reaches or exceeds the minimum threshold of 5%, it is not necessary to disclose the number of voting rights held before the transaction having triggered the notification requirement, but only that the proportion of voting rights previously held was below the minimum threshold. By analogy, where the proportion of voting rights falls below the minimum threshold of 5%, the resulting situation after the triggering transaction does not need to be specified; but only that the proportion of voting rights held subsequently is below the minimum threshold. The absence of the requirement to disclose the number of voting rights held before or after the transaction shall only apply where, at this point in time, the relevant persons do not reach or exceed, having considered all of the articles in question⁹, the thresholds provided for in Article 8 of the Law. If this is not the case, detailed information on the breakdown of voting rights in all tables A, B 1 and B 2 under point 7 shall be provided for information purposes, even if individually they do not either reach or exceed the 5% threshold.

Deleted: In addition to ANNEXE A, these persons shall file the complement to ANNEXE A (ANNEXE A bis) with the CSSF. It should be remembered that the notification must be effected as soon as possible, but not later than six trading days following a transaction or four trading days following information of an event changing the breakdown of voting rights by the issuer.¶

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Specifications relating to the different cases referred to in Article 9 of the Law are given under point 2 of this circular.

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If the proportion of the sole voting rights that may be obtained in the capital of an issuer by virtue of such specific financial instruments reaches, exceeds or falls below the above-mentioned thresholds, the notification obligation is triggered and the holder of the financial instruments must use the form provided in ANNEXE A in order to fulfil its obligation. In this case, the persons concerned shall fill out, in particular, table B under point 7 of this annex. ¶
Moreover, the persons making a notification in accordance with Article 8 and/or 9 of the Law shall notify simultaneously and for information purposes the number of voting rights that may potentially be acquired. By analogy, the persons notifying in accordance with Article 12 (relating to specific financial instruments) shall indicate, for information purposes, the number of voting rights they hold in accordance with Articles 8 and/or 9, where applicable. In both cases, the shareholders shall fill out table A as well as table B under point 7 of ANNEXE A. ¶

⁷ It should be specified that the notification shall include the figures per class of shares whereas the threshold that triggers the notification requirement shall be the overall threshold calculated on the basis of all the voting rights held (across all categories).

⁸ I.e. the persons whose number of voting rights attached to the financial instruments referred to in Article 12 of the Law, which are aggregated with the shares held by these persons, in accordance with Articles 8 and 9 of the Law, reaches or exceeds one or several above-mentioned thresholds.

⁹ Articles 8, 9, 12 and 12a.

In addition to ANNEX A, these persons shall file ANNEX A bis (which supplements ANNEX A) with the CSSF.

It is recalled that the notification shall be effected promptly and not later than six trading days¹⁰ following a transaction or no later than four trading days following the disclosure of the information by the issuer of an event resulting in the change of the total number of voting rights. The notification to the issuer is filed, at the same time, with the CSSF¹¹ with a confirmation of the date on which this notification was sent to the issuer.

b. Form to be used for the disclosure of the total number of voting rights and capital

By virtue of Article 14 of the Law and for the purpose of calculating the thresholds provided for in Article 8 of the Law, issuers whose home Member State is Luxembourg shall calculate and publish the total number of voting rights and capital at the end of each calendar month during which an increase or decrease of such total number has occurred. This publication shall take place no later than the last day of the month and shall be deemed fulfilled if the issuer proceeds to it during the month, except if another change occurs between the date of this publication and the end of the month, in which case the issuer should make a new publication.

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For the purposes of dissemination, storage and filing of these total numbers, the issuers shall use the form in ANNEX B to this circular.

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For the calculation referred to in the first paragraph, the issuers shall apply the following rules:

- The notion of “total number of voting rights” refers to the total number of voting rights attaching to the shares composing the share capital of the notifying issuer, including the suspended voting rights¹². The “total capital” shall be the total number of shares composing the share capital of the notifying issuer.
- The notion thus also includes the voting rights attaching to own shares held by the issuer and whose voting right is suspended. For companies incorporated under Luxembourg law, it concerns own shares where the voting rights are suspended by virtue of Article 49-5(1)(a) of the Law of 10 August 1915 on commercial companies (“the LCC”). Without prejudice to Article 13 of the Law, the issuer is not required to differentiate between own shares and other shares for the disclosure of the total number of voting rights and capital.

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¹⁰ The six-day time limit results from the joint reading of Article 11(2) of the Law and Article 10 of the Grand-ducal Regulation.

¹¹ Article 18(2).

¹² Even though the participating shares referred to in Article 37 of the Law on commercial companies are not part of the capital, the voting rights that might be attached thereto must be included in the total number of voting rights, where applicable.

- The voting right which, in the context of specific decisions set out in Article 46(1) of the LCC, is attached to shares representing capital without voting rights of a Luxembourg company, shall not be included in the total number of voting rights, without prejudice to the obligation of the issuer to take them into account when providing information referred to in Article 16(2)(a) of the Law where resolutions concerning the issues referred to in Article 46(1) of the LCC are on the agenda of the general meeting.
- As soon as holders of shares without voting rights recover the same voting right as holders of ordinary shares, that voting right must be included in the total number of voting rights (as long as the voting right continues).

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c. Form to be used for the notification of the activity as market maker

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Article 8(4) of the Law provides that, under certain circumstances, the notification requirement set out in the first paragraph of that Article shall not apply to market makers for the acquisition or disposal of a major holding reaching or crossing the 5% threshold. Pursuant to Article 7 of the Grand-ducal Regulation, the market maker seeking to benefit from the above exemption shall notify to the CSSF, where Luxembourg is the home Member State of the issuer concerned, that it conducts or intends to conduct market making activities on a particular issuer. The same applies where the market maker ceases to conduct market making activities in respect of the issuer concerned.

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In both cases, market makers shall use the form in ANNEX C to this circular.

It should be noted that Articles 2 and 3 of Commission Delegated Regulation (EU) 2015/761 of 17 December 2014 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings (hereinafter “RTS on major holdings”) provide details on the calculation of the 5 % threshold referred to in Article 8(4).

2. Notification requirement in the cases referred to in Article 9 of the Law

The persons entitled to exercise voting rights in accordance with Article 9 of the Law have to add these voting rights to those already held pursuant to Article 8.

As regards the different cases referred to in Article 9 of the Law, Article 9 of the Grand-ducal Regulation specifies certain circumstances in which the notification of major holdings must be made by the different persons and in the different situations listed in that Article. Where the duty to make a notification lies with more than one person, notification may be made by means of a single common notification. Nevertheless, each person having the obligation to notify remains individually responsible for ensuring that the content of the common notification is accurate and that it is made within the time limit and in accordance with the rules provided for in the Law and Grand-ducal Regulation.

In practice, the notification requirement applies to the following persons (if, following the event referred to in the respective articles, the proportion of voting rights held by these persons reaches, exceeds or falls below one of the thresholds referred to in Article 8):

- *Article 9(a) of the Law*

In the circumstances referred to in letter (a) of Article 9 of the Law, the notification requirement shall be a collective obligation shared by all parties to the agreement. Thus, all parties to the agreement must make a notification. These notifications may be made by means of a single common notification. In this case, the persons should be free to determine who, among them, will actually make the notification.

Moreover, all parties to the agreement are responsible for making a notification to the CSSF and to the issuer when the agreement comes to an end. Again, a single common notification shall be sufficient.

- *Article 9(b) of the Law*

The circumstances foreseen in Article 9(b) trigger the notification requirement at the same time for the person that acquires voting rights and is entitled to exercise them under an agreement and for the person transferring the voting rights temporarily and for consideration.

Under the terms of the agreement, both persons are required to notify the situation resulting from the termination of the agreement.

- *Article 9(c) of the Law*

If the person holding shares which are lodged as collateral controls the voting rights attaching thereto and declares its intention of exercising them, it is subject to the notification requirement. The person lodging the shares shall also notify the disposal of the rights attaching to these shares. A notification must also be made when the shares and voting rights attaching thereto are returned to the owner of the shares.

On the other hand, if the person lodging the shares as collateral maintains control and exercises the voting rights attaching to these shares, no notification is required.

- *Article 9(d) of the Law*

If the person having the usufruct in shares also holds the right to exercise the voting rights attaching thereto, it is subject to the notification requirement. In this case, the same applies to the person disposing of voting rights when the life interest is created. Both persons must make a notification when the life interest ends.

If no transfer of voting rights is involved, no notification is required.

- Article 9(e) of the Law

Without prejudice to Article 11(4) and (5), the person controlling an undertaking, including, inter alia, the ultimate beneficial owner of the voting rights, is required to aggregate its holdings with those held by the undertakings controlled. The notification to be made, in accordance with Article 11(1) of the Law includes in this case the chain of controlled undertakings¹³ through which voting rights are effectively held (point 8 of the form in ANNEX A). The entire chain of controlled undertakings, starting with the ultimate beneficial owner of the voting rights, shall also be presented in the cases where a subsidiary individually exceeds or reaches one or several thresholds in order to always provide a complete and comprehensive picture of the group's holdings. In the case where the group's structure is very complex, the holder shall attach an organisational chart of the group to the notification.

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In this context, the notification requirements of major holdings, provided for in Article 8, shall also apply to the ultimate beneficial owners (natural or legal persons) of the voting rights, held indirectly within the meaning of Article 9(e). The notion of controlled undertaking shall be understood in the meaning of the definition provided for in Article 1(4) of the Law.

In the circumstances referred to in Article 9(e) of the Law, the following two cases may arise:

- The controlled undertakings have an individual notification requirement

Where holdings of a controlled undertaking alone trigger the notification requirement in accordance with Articles 8, 9, letters (a), (b), (c) or (d), 12 and/or 12a of the Law, the controlled undertaking and the controlling person(s) are subject to the notification requirement. It should be noted that in accordance with Article 11(3) of the Law, a controlled undertaking is exempted from making the required notification if the notification is made by the parent undertaking in the name and on behalf of the controlled undertaking. It should be noted that the exemption provided for in Article 11(3) shall also apply when the notification is made in the name and on behalf of the controlled undertaking by the ultimate beneficial owner of the voting rights, in particular, if the latter is a natural person.

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- The controlled undertakings do not have an individual notification requirement

Where the controlled undertakings do not individually reach one of the thresholds provided for in Article 8 of the Law, the controlled undertakings are not individually subject to the notification requirement.

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¹³ The controlling person making the notification is always required to indicate all the names of the intermediary companies directly or indirectly controlled by it and is required to indicate the proportion of the voting rights of each of these entities in the issuer with a holding exceeding or equal to the minimum threshold of 5%.

However, if by aggregating the direct or indirect holdings, one of the thresholds provided for in Article 8 is crossed, the controlling person which is entitled to exercise the voting rights attaching to the holdings of the undertakings controlled shall make a notification where either the total holdings of the controlled undertakings alone, or the sum of this total and of its own holdings crosses one of the thresholds provided for in Article 8 of the Law.

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- *Article 9(f) of the Law*

Where shares to which voting rights are attached are deposited with a third person, no notification is required if the voting rights remain with the person that deposits its shares.

If, on the other hand, the deposit taker may exercise the voting rights at his/her discretion pursuant to an agreement¹⁴ entered into with the depositor, the former, as well as the person having disposed of its voting rights, are required to make a notification.

However, if the deposit taker exercises the voting rights, in accordance with the instructions received from the depositor, no notification is required.

Where the entitlement to exercise voting rights has been transferred, the persons having crossed one of the thresholds provided for in Article 8 of the Law are required to make a notification when the entitlement to exercise voting rights is transferred back to the shareholder.

- *Article 9(g) of the Law*

In the circumstance foreseen in Article 9(g) of the Law, the person that actually holds the voting rights and is therefore entitled to exercise the voting rights, in its name or in the name of another person, is required to make a notification if one of the thresholds provided for in Article 8 of the Law is crossed. In this case a transfer of ownership of the securities concerned is not necessary.

Where the voting rights are transferred and thresholds crossed, all the parties having crossed one of the thresholds referred to in Article 8 of the Law are required to make a notification. However, the notification requirements of the different parties may be met by way of a single notification, provided that this single declaration includes all the information required in order to give a complete and comprehensive picture of the situation.

- *Article 9(h) of the Law*

If the proxy holder may exercise voting rights in the absence of contrary instructions from the shareholder, a notification is required. The same applies to the shareholder who has explicitly conferred its voting rights on the proxy holder.

¹⁴ For example, in the context of a custody agreement or general terms and conditions.

Upon termination of the agreement, both parties are again subject to the notification requirement when crossing a threshold.

It should be noted that if voting rights are conferred on a proxy holder on one occasion only (e.g. general meeting), the proxy holder as well as the shareholder may make one single notification in which they confirm that the voting rights are only transferred on a temporary basis and for a unique occasion (which must be specified). They shall also specify what the situation will be after the unique exercise of the voting right.

3. Specific financial instruments referred to in Article 12 of the Law

The notification requirements laid down in Article 8 of the Law shall also apply to a natural or legal person that holds, directly or indirectly:

financial instruments that, on maturity, give the holder, under a formal agreement, either an unconditional right to acquire or the discretion as to his right to acquire, shares to which voting rights are attached and already issued; and/or

financial instruments which are not included in the first indent above but which are referenced to shares referred to in this indent and with economic effect similar to that of the financial instruments referred to in this indent, whether or not they confer a right to a physical settlement.

The exemptions provided for in Articles 8¹⁵ and 11¹⁶ of the Law also apply in the context of Article 12.

Article 12(3) of the Law specifies that the term “financial instrument” (meeting the criteria set forth in one of the above-mentioned indents) refers to transferable securities, options, futures, swaps, forward rate agreements, contracts for differences and any other contracts or agreements with similar economic effects which may be settled physically or in cash, provided that they meet any of the conditions set out above.

Moreover, only instruments that fulfil the following conditions are concerned by the first indent above:

- They give the right to acquire and not to sell. A put option is thus not considered as a financial instrument in accordance with Article 12 of the Law. Instruments resulting in an entitlement to sell shall thus not be considered at all when calculating the proportion of the potential voting rights. Thus, a call option and a put option referring to the shares of a same issuer do not cancel each other out. The person holding these two instruments must only consider the option to acquire underlying shares when calculating the proportion referred to in Article 8 of the Law.

¹⁵ Paragraphs 3, 4 and 5.

¹⁶ Paragraphs 3, 4 and 5.

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- They give an unconditional right to the holder or a discretion as to his right but not to the issuer or a third party.
- It is an unconditional right or a discretion as to the right to acquire the underlying shares. In the case of an unconditional right, the exercise of this right can thus not depend on external factors, such as the price of the underlying share for example. However, the ability to acquire underlying shares refers to the agreements which provide for the mere possibility of a physical settlement, i.e. in shares.
- The unconditional right or discretion as to the right to acquire the underlying shares must be provided for in a formal agreement, i.e. pursuant to an agreement which is binding under the law.

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It should be noted that ESMA has drawn up and regularly updates an indicative list of financial instruments that are subject to the notification requirements according to Article 12(1). This list is available on ESMA's website or the CSSF website (section Supervision > Securities markets > Transparency > European documentation).

As far as the specific financial instruments referred to in Article 12 are concerned, it is noted that the number of voting rights shall, in principle, be calculated by reference to the full notional amount of underlying shares.

Financial instruments providing exclusively for a cash settlement, constitute an exception to this rule. In this case, the number of voting rights shall be calculated on a delta-adjusted basis, by multiplying the notional number of underlying shares by the delta of the instrument¹⁷. When notifying specific financial instruments providing exclusively for a cash settlement, the holder shall follow the instructions below:

- s/he shall aggregate and notify all the financial instruments relating to the same underlying issuer;
- in the same way as for the other financial instruments referred to in Article 12, only the long positions shall be taken into account for the calculation of voting rights;
- long positions shall not be netted with short positions relating to the same underlying issuer;
- the number of voting rights shall be calculated in accordance with the provisions of the RTS on major holdings, and
- in the case where the holder in question has already made a notification for the same issuer and changes his/her generally accepted standard pricing model

¹⁷ Upon request by the CSSF, the holder may be required to provide it with precise information on the determination of the delta, as provided for in Article 12(2) of the Law and Article 5 of the major holdings RTS.

referred to in Article 5 of the RTS on major holdings, a mention hereto shall be made in his/her notification.

Finally, the notification only mentions the identity of the issuer of the underlying shares which may be acquired and not the identity of the issuer of the financial instruments.

4. European documentation

In addition to the various specifications already outlined in this circular, it should be noted that Articles 2, 3 and 6 of the RTS on major holdings further clarify the exemption provided for in Article 8(5) of the Law concerning the voting rights held in the trading book.

Article 4 of the RTS on major holdings provides details on the calculation of the voting rights in the event of financial instruments referenced to a basket of shares or an index.

The table below includes the different articles of the RTS on major holdings and the articles of the Law to which they relate:

<u>RTS on major holdings</u>	<u>Law</u>
<u>Article 2 Aggregation of holdings</u>	<u>Article 8(4) and (5)</u>
<u>Article 3 Aggregation of holdings in the case of a group</u>	<u>Article 8(4) and (5)</u>
<u>Article 4 Financial instruments referenced to a basket of shares or an index</u>	<u>Article 12(2)</u>
<u>Article 5 Financial instruments which provide exclusively for a cash settlement</u>	<u>Article 12(2)</u>
<u>Article 6 Client-serving transactions</u>	<u>Article 8(5)</u>

As a reminder, ESMA has drawn up and regularly updates an indicative list of financial instruments that are subject to notification requirements in accordance with Article 12(1).

Moreover, ESMA published on 22 October 2015 Questions and Answers (ESMA/2015/1595) that provide more practical details as regards the notification requirements for major holdings.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Françoise KAUTHEN

Claude SIMON

Simone DELCOURT

Claude MARX

Director

Director

Director

Director General

Annexes:

Annex A: [Form to be used for the purposes of notifying the acquisition or disposal of major holdings](#)

Annex A bis: [Complement to Annex A](#)

Annex B: [Form to be used for the disclosure of the total number of voting rights and capital](#)

Annex C: [Form to be used for the notification by market makers](#)

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ANNEX A: Standard form for notification of major holdings

Form to be used for the purposes of notifying a change in major holdings pursuant to the modified law grand-ducal regulation of 11 January 2008 on transparency requirements for issuers (referred to as “the Transparency Law” and “the Transparency Regulation”)

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¶ Form to be used for the purposes of notifying the acquisition or disposal of major holdings pursuant to the law and grand-ducal regulation of 11 January 2008 on transparency requirements for issuers of securities (referred to as “the Transparency Law” and “the Transparency Regulation”)¶

- ¶
1. . Identity of the issuer or the underlying issuer of existing shares to which voting rights are attached: ¶
 2. . Reason for the notification (please tick the appropriate box or boxes):¶
 - [] . an acquisition or disposal of voting rights¶
 - [] . an acquisition or disposal of financial instruments which may result in the acquisition of shares already issued to which voting rights are attached¶
 - [] . an event changing the breakdown of voting rights¶
 3. . Full name of person(s) subject to the notification obligationⁱⁱ:¶
 4. . Full name of shareholder(s) (if different from the person mentioned in point 3.)ⁱⁱⁱ:¶
 5. . Date of the transaction and date on which the threshold is crossed or reached^{iv}:¶
 6. . Threshold(s) that is/are crossed or reached: ¶
 7. . Notified details: ¶

¶ A) Voting rights attached to shares (article 8 and 9 of the Transparency Law)

NOTIFICATION OF MAJOR HOLDINGS (to be sent to the relevant issuer and to the CSSF)

1. Identity of the issuer or the underlying issuer of existing shares to which voting rights are attached:

2. Reason for the notification (please tick the appropriate box or boxes):

- An acquisition or disposal of voting rights
- An acquisition or disposal of financial instruments
- An event changing the breakdown of voting rights
- Other (please specify)ⁱⁱⁱ: _____

3. Details of person subject to the notification obligation^v:

Name: _____ City and country of registered office (if applicable): _____

4. Full name of shareholder(s) (if different from 3.):

5. Date on which the threshold was crossed or reached^{vi}:

6. Total positions of person(s) subject to the notification obligation:

	% of voting rights attached to shares (total of 7.A)	% of voting rights through financial instruments (total of 7.B.1 + 7.B.2)	Total of both in % (7.A + 7.B)	Total number of voting rights of issuer ^{vii}
Resulting situation on the date on which threshold was crossed or reached	_____ %	_____ %	_____ %	_____
Position of previous notification (if applicable)	_____ %	_____ %	_____ %	

7. Notified details of the resulting situation on the date on which the threshold was crossed or reached^(vi):				
A: Voting rights attached to shares				
<u>Class/type of shares</u> ISIN code (if possible)	<u>Number of voting rights^x</u>		<u>% of voting rights</u>	
	<u>Direct</u> (Art. 8 of the Transparency Law)	<u>Indirect</u> (Art. 9 of the Transparency Law)	<u>Direct</u> (Art. 8 of the Transparency Law)	<u>Indirect</u> (Art. 9 of the Transparency Law)
_____	_____	_____	_____ %	_____ %
_____	_____	_____	_____ %	_____ %
_____	_____	_____	_____ %	_____ %
SUBTOTAL A (Direct & Indirect)	_____	_____	_____ %	_____ %

B 1: Financial Instruments according to Art. 12(1)(a) of the Transparency Law				
<u>Type of financial instrument</u>	<u>Expiration date^z</u>	<u>Exercise/ Conversion Period^z</u>	<u>Number of voting rights that may be acquired if the instrument is exercised/ converted.</u>	<u>% of voting rights</u>
_____	_____	_____	_____	_____ %
_____	_____	_____	_____	_____ %
_____	_____	_____	_____	_____ %
SUBTOTAL B.1			_____	_____ %

B 2: Financial Instruments with similar economic effect according to Art. 12(1)(b) of the Transparency Law					
<u>Type of financial instrument</u>	<u>Expiration date^z</u>	<u>Exercise/ Conversion Period^z</u>	<u>Physical or cash settlement^{xi}</u>	<u>Number of voting rights</u>	<u>% of voting rights</u>
_____	_____	_____	_____	_____	_____ %
_____	_____	_____	_____	_____	_____ %
_____	_____	_____	_____	_____	_____ %
SUBTOTAL B.2				_____	_____ %

8. Information in relation to the person subject to the notification obligation:

(please tick the applicable box)

Person subject to the notification obligation is not controlled by any natural person or legal entity and does not control any other undertaking(s) holding directly or indirectly an interest in the (underlying) issuer.^{vi}

Full chain of controlled undertakings through which the voting rights and/or the financial instruments are effectively held starting with the ultimate controlling natural person or legal entity^{vii} (please provide a separate organisational chart in case of a complex structure):

<u>N°</u>	<u>Name^v</u>	<u>% of voting rights held by ultimate controlling person or entity or held directly by any subsidiary if it equals or is higher than the notifiable threshold</u>	<u>% of voting rights through financial instruments held by ultimate controlling person or entity or held directly by any subsidiary if it equals or is higher than the notifiable threshold</u>	<u>Total of both</u>	<u>Directly controlled by (use number(s) from 1st column)</u>
_____	_____	_____ %	_____ %	_____ %	_____
_____	_____	_____ %	_____ %	_____ %	_____
_____	_____	_____ %	_____ %	_____ %	_____
_____	_____	_____ %	_____ %	_____ %	_____
_____	_____	_____ %	_____ %	_____ %	_____

9. In case of proxy voting:

The proxy holder named _____ will cease to hold _____ % and _____ number of voting rights as of _____.

10. Additional information^{viii}:

Done at

On

ANNEX A bis: Notification of major holdings

(Complement to ANNEX A/only to be filed with the CSSF and not with the relevant issuer)

Deleted: ANNEXE A bis¹⁸ ¶
(Complement to ANNEXE A)¶

¶ (a) - Identity of the person or legal entity subject to the notification obligation: ¶

Full name (including legal form for legal entities):

...

A: Identity of the person subject to the notification obligation

Full name (including legal form for legal entities)

Contact address (registered office for legal entities)

E-Mail

Phone number/Fax number

Other useful information (at least legal a contact person for legal persons)

B: Identity of the notifier, if applicable

Full name

Contact address

E-Mail

Phone number/Fax number

Other useful information (e.g. functional relationship with the person or legal entity subject to the notification obligation)

C: Additional information:

Notes

ⁱ Please note that national forms may vary due to specific national legislation (Article 3(1a) of Directive 2004/109/EC) as for instance the applicable thresholds or information regarding capital holdings.

ⁱⁱ Full name of the legal entity and further specification of the issuer or underlying issuer, provided it is reliable and accurate (e.g. address, LEI, domestic number identity).

ⁱⁱⁱ Other reason for the notification could be voluntary notifications, changes of attribution of the nature of the holding (e.g. expiring of financial instruments) or acting in concert.

^{iv} This should be the full name of (a) the shareholder; (b) the natural person or legal entity acquiring, disposing of or exercising voting rights in the cases provided for in Article 9 (b) to (h) of the Transparency Law; or (c) the holder of financial instruments referred to in Article 12(1) of the Transparency Law.

As the disclosure of cases of acting in concert may vary due to the specific circumstances (e.g. same or different total positions of the parties, entering or exiting of acting in concert by a single party) the standard form does not provide for a specific method how to notify cases of acting in concert.

In relation to the transactions referred to in points (b) to (h) of Article 9 of the Transparency Law, the following list is provided as indication of the persons who should be mentioned:

- in the circumstances foreseen in letter (b) of Article 9 of that Law, the natural person or legal entity that acquires the voting rights and is entitled to exercise them under the agreement and the natural person or legal entity who is transferring temporarily for consideration the voting rights;

- in the circumstances foreseen in letter (c) of Article 9 of that Law, the natural person or legal entity holding the collateral, provided the person or entity controls the voting rights and declares its intention of exercising them, and natural person or legal entity lodging the collateral under these conditions;

- in the circumstances foreseen in letter (d) of Article 9 of that Law, the natural person or legal entity who has a life interest in shares if that person or entity is entitled to exercise the voting rights attached to the shares and the natural person or legal entity who is disposing of the voting rights when the life interest is created;

- in the circumstances foreseen in letter (e) of Article 9 of that Law, the controlling natural person or legal entity and, provided it has a notification duty at an individual level under Article 8, under letters (a) to (d) of Article 9 of that Law or under a combination of any of those situations, the controlled undertaking;

- in the circumstances foreseen in letter (f) of Article 9 of that Law, the deposit taker of the shares, if he can exercise the voting rights attached to the shares deposited with him at his discretion, and the depositor of the shares allowing the deposit taker to exercise the voting rights at his discretion;

- in the circumstances foreseen in letter (g) of Article 9 of that Law, the natural person or legal entity that controls the voting rights;

- in the circumstances foreseen in letter (h) of Article 9 of that Law, the proxy holder, if he can exercise the voting rights at his discretion, and the shareholder who has given his proxy to the proxy holder allowing the latter to exercise the voting rights at his discretion (e.g. management companies).

^v Applicable in the cases provided for in Article 9 (b) to (h) of the Transparency Law. This should be the full name of the shareholder who is the counterparty to the natural person or legal entity referred to in Article 9 of that Law unless the percentage of voting rights held by the shareholder is lower than the 5% threshold for the disclosure of voting rights holdings (e.g. identification of funds managed by management companies).

^{vi} The date on which threshold is crossed or reached should be the date on which the acquisition or disposal took place or the other reason triggered the notification obligation. For passive crossings, the date when the corporate event took effect.

^{vii} The total number of voting rights shall be composed of all the shares, including depository receipts representing shares, to which voting rights are attached even if the exercise thereof is suspended.

^{viii} If the holding has fallen below the 5% threshold, please note that it is not necessary to disclose the extent of the holding, only that the new holding is below that threshold.

^{ix} In case of combined holdings of shares with voting rights attached "direct holding" and voting rights "indirect holding", please split the voting rights number and percentage into the direct and indirect columns – if there is no combined holdings, please leave the relevant box blank.

^x Date of maturity/expiration of the financial instrument i.e. the date when right to acquire shares ends.

^{xi} If the financial instrument has such a period – please specify this period – for example once every 3 months starting from [date].

^{xii} In case of cash settled instruments the number and percentages of voting rights is to be presented on a delta-adjusted basis (Article 12(2) of the Transparency Law).

^{xiii} If the person subject to the notification obligation is either controlled and/or does control another undertaking then the second option applies.

^{xiv} The full chain of controlled undertakings starting with the ultimate controlling natural person or legal entity also has to be presented in the cases in which only on subsidiary level a threshold is crossed or reached and the subsidiary undertaking discloses the notification as only then the market always gets the full picture of the group holdings. In case of multiple chains through which the voting rights and/or financial instruments are effectively held the chains have to be presented chain by chain leaving a row free between different chains (e.g.: A, B, C, free row, A, B, D, free row, A, E, F etc.). Numbers shall be attributed to all persons or entities within the group in column 1 in order to allow a clear indication of the control structure in column 6. The names of all undertakings of the control chain shall be provided in column 2, even if the number of the directly held voting rights and/or financial instruments is not equal or higher than the notifiable threshold. Columns 3 & 4 shall indicate the holdings of those persons or entities directly holding the voting rights and/or financial instruments if the holding is equal or higher than the notifiable threshold.

^{xv} The names of controlled undertakings through which the voting rights and/or financial instruments are effectively held have to be presented irrespectively whether the controlled undertakings cross or reach the lowest applicable threshold themselves.

^{xvi} Example: Correction of a previous notification.

ANNEX B

**Form to be used for the disclosure of the total number of voting rights and capital,
in accordance with the Law and Grand-ducal Regulation of 11 January 2008 on
transparency requirements for issuers**

1. Identity of the issuer or the underlying issuer of existing shares to which voting rights are attachedⁱ (including the issuer reference number allocated by the CSSF)
2. Identity of the notifier (if another person makes the notification on behalf of the issuer)
3. Total number of shares composing the share capital of the notifying issuer
4. Total number of voting rights attached to the shares composing the share capital of the notifying issuer, including the suspended voting rightsⁱⁱ
5. Total number of voting rights, excluding suspended voting rights (exercisable voting rights) (optional)
6. Origin of the changeⁱⁱⁱ
7. Date when the change occurred
8. In the previous notification (optional)
 - the total number of shares was of
 - the total number of voting rights was of
 - the total number of exercisable voting rights was of

ⁱ Either the full name of the legal entity or another method for identifying the issuer or underlying issuer, provided it is reliable and accurate.

ⁱⁱ For further details on the total number of voting rights, please refer to point 1(b) of Circular CSSF 08/349.

ⁱⁱⁱ As, for example, a capital increase or reduction.

ANNEX C

Form to be used for the notification by market makers, to be filed in accordance with the Law and Grand-ducal Regulation of 11 January 2008 on transparency requirements for issuers

1. Identity of the Market Maker:

Full name (including legal form for legal entities):
.....
Contact address (registered office for legal entities):
.....
.....
Phone number, fax and e-mail address:
.....
Other useful information (at least a contact person for legal persons):

2. Identity of the notifier [if another person makes the notification on behalf of the market maker mentioned in point (1)]:

Full name:
.....
Contact address:
.....
.....
Phone number, fax and e-mail address:
.....
Other useful information (e.g. functional relationship with the person or legal entity subject to the notification obligation):

3. Reason for notification

The Market Maker mentioned in point (1) intends to conduct market making activities in relation to the following issuer:

The Market Maker mentioned in point (1) ceases to conduct market making activities in relation to the following issuer:

Issuer	
--------	--

4. Where the Market Maker mentioned in point (1) intends to conduct market making activities, please indicate:

- the Competent Authority that authorised
the Market Maker under Directive
2004/39/EC:

- when this authorisation was obtained:

5. The Market Maker mentioned in point (1) declares that it does not intervene in the management of the issuer identified in (3) nor exerts any influence on that issuer to buy such shares or back the share price.

Done at [*place*] on [*date*]

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

In case of discrepancies between the French and the English text, the French text shall prevail.

Luxembourg, 22 June 2016

To all the persons concerned

CIRCULAR CSSF 08/349

as amended by Circular CSSF 16/638

Re: Details regarding the information to be notified with respect to major holdings in accordance with the Law of 11 January 2008 on transparency requirements for issuers, as amended

Ladies and Gentlemen,

We are pleased to follow-up on Circular CSSF 08/337 of 6 February 2008 on the Law and Grand-ducal Regulation of 11 January 2008 on transparency requirements for issuers, as amended (hereinafter referred to as the “**Law**” and the “**Grand-ducal Regulation**”, respectively) and Commission Delegated Regulation (EU) 2015/761 of 17 December 2014.

In accordance with the provisions of Article 11(1) of the Law, the CSSF defines the content and form of the notification required pursuant to Articles 8 and 9 of the Law. The purpose of this circular is to introduce the standard form to be used for such a notification, the standard form to be used by the issuer for the disclosure of the total number of voting rights and capital under Article 14 of the Law, as well as the form to be filed with the CSSF by a market maker seeking to benefit from the exemption provided for under Article 8(4) of the Law and in order to comply with the requirements laid down in Article 7 of the Grand-ducal Regulation. Moreover, it presents the different cases that may arise in the context of Article 9 of the Law¹ and provides details on certain specific financial instruments referred to in Article 12 of the Law.

¹ These provisions only apply to the persons entitled to acquire or dispose of voting rights attached to shares of an issuer whose home Member State is Luxembourg in accordance with the Law. By analogy, the persons who are entitled to acquire or dispose of voting rights attached to shares of an issuer whose home Member State is not Luxembourg, shall comply with the rules applicable in the respective home Member States.

The requirements as regards information concerning major holdings apply to shareholders², including the holders of depositary receipts representing shares³ (as for example GDRs, FDRs, etc.), and to issuers of shares⁴, including to issuers of underlying shares of depositary receipts⁵. Any reference to shares made in the explanations below shall be understood, within the limits laid down in Articles 8 to 14 of the Law, as including a reference to depositary receipts representing shares.

It should be kept in mind that the provisions of the Law only apply to issuers whose securities are admitted to trading on a regulated market⁶. Moreover, they do not apply to units issued by collective investment undertakings other than the closed-end type, or to units acquired or disposed of in such collective investment undertakings.

In addition to the details included in this circular, practical details are also set forth in the Questions and Answers published by ESMA on 22 October 2015 (ESMA/2015/1595) and the FAQ relating to the Law and Regulation published on the CSSF website.

1. Standard forms

The different forms to be used for the notifications required by the Law are appended to this circular.

a. Form to be used for the notification of the acquisition or disposal of major holdings

Article 8 of the Law sets out the thresholds that trigger the requirement to notify the proportion of voting rights held by a natural or legal person (the “persons”) in the capital of an issuer as a result of the acquisition or disposal of shares to which voting rights are attached. The thresholds laid down by the Law are: 5%, 10%, 15%, 20%, 25%, 33 1/3%, 50% and 66 2/3%. A notification requirement is triggered when one or several thresholds are crossed in the cases provided for in Articles 8, 9, 12 or 12a of the Law. For a general description of the notification requirements of the shareholders and issuers of shares whose home Member State is Luxembourg, reference is made to Circular 08/337.

For the purposes of a notification as mentioned above, the relevant persons shall use the form in ANNEX A of this circular by complying with the following rules:

- The relevant persons are required to provide information for each point of the form of the annex. In case a point is not applicable or the number of voting rights is equal to zero, a mention hereto shall be made in the form.

² Regardless of whether all or part of the issuer’s shares are admitted to trading on a regulated market.

³ Regardless of whether or not the underlying instrument is admitted on a regulated market.

⁴ Cf. note 2.

⁵ Cf. note 3.

⁶ Regardless of whether all or part of the issuer’s shares are admitted to trading on a regulated market and as regards issuers of securities represented by depositary receipts, regardless of whether or not the underlying instrument is admitted on a regulated market.

- The persons referred to in Articles 8 and 9 of the Law, i.e. the shareholders and persons entitled to acquire, to dispose of, or to exercise voting rights in any of the cases (or a combination of them) referred to in Article 9 of the Law, shall indicate this information in table A under point 7 of this annex⁷.
- The persons referred to in Article 12 of the Law, i.e. the holders of specific financial instruments shall indicate this information in tables B 1 and B 2 under point 7 of this annex. It should be noted that for table B 2, a distinction should be made between financial instruments which confer a right to a physical settlement and financial instruments which confer a right to a cash settlement.
- The persons referred to in Article 12a of the Law⁸ shall provide details on the breakdown of voting rights in tables A, B 1 and B 2 under point 7.

It should be stressed that pursuant to Article 12a(2) of the Law, the voting rights attached to specific financial instruments, which have already been notified, shall be notified again when the natural person or the legal entity has acquired the underlying shares and such acquisition results in the total number of voting rights attached to shares issued by the same issuer reaching or exceeding one or several above-mentioned thresholds.

Where the proportion of voting rights held reaches or exceeds the minimum threshold of 5%, it is not necessary to disclose the number of voting rights held before the transaction having triggered the notification requirement, but only that the proportion of voting rights previously held was below the minimum threshold. By analogy, where the proportion of voting rights falls below the minimum threshold of 5%, the resulting situation after the triggering transaction does not need to be specified; but only that the proportion of voting rights held subsequently is below the minimum threshold. The absence of the requirement to disclose the number of voting rights held before or after the transaction shall only apply where, at this point in time, the relevant persons do not reach or exceed, having considered all of the articles in question⁹, the thresholds provided for in Article 8 of the Law. If this is not the case, detailed information on the breakdown of voting rights in all tables A, B 1 and B 2 under point 7 shall be provided for information purposes, even if individually they do not either reach or exceed the 5% threshold.

Specifications relating to the different cases referred to in Article 9 of the Law are given under point 2 of this circular.

⁷ It should be specified that the notification shall include the figures per class of shares whereas the threshold that triggers the notification requirement shall be the overall threshold calculated on the basis of all the voting rights held (across all categories).

⁸ I.e. the persons whose number of voting rights attached to the financial instruments referred to in Article 12 of the Law, which are aggregated with the shares held by these persons, in accordance with Articles 8 and 9 of the Law, reaches or exceeds one or several above-mentioned thresholds.

⁹ Articles 8, 9, 12 and 12a.

In addition to ANNEX A, these persons shall file ANNEX A bis (which supplements ANNEX A) with the CSSF.

It is recalled that the notification shall be effected promptly and not later than six trading days¹⁰ following a transaction or no later than four trading days following the disclosure of the information by the issuer of an event resulting in the change of the total number of voting rights. The notification to the issuer is filed, at the same time, with the CSSF¹¹ with a confirmation of the date on which this notification was sent to the issuer.

b. Form to be used for the disclosure of the total number of voting rights and capital

By virtue of Article 14 of the Law and for the purpose of calculating the thresholds provided for in Article 8 of the Law, issuers whose home Member State is Luxembourg shall calculate and publish the total number of voting rights and capital at the end of each calendar month during which an increase or decrease of such total number has occurred. This publication shall take place no later than the last day of the month and shall be deemed fulfilled if the issuer proceeds to it during the month, except if another change occurs between the date of this publication and the end of the month, in which case the issuer should make a new publication.

For the purposes of dissemination, storage and filing of these total numbers, the issuers shall use the form in ANNEX B to this circular.

For the calculation referred to in the first paragraph, the issuers shall apply the following rules:

- The notion of “total number of voting rights” refers to the total number of voting rights attaching to the shares composing the share capital of the notifying issuer, including the suspended voting rights¹². The “total capital” shall be the total number of shares composing the share capital of the notifying issuer.
- The notion thus also includes the voting rights attaching to own shares held by the issuer and whose voting right is suspended. For companies incorporated under Luxembourg law, it concerns own shares where the voting rights are suspended by virtue of Article 49-5(1)(a) of the Law of 10 August 1915 on commercial companies (“the LCC”). Without prejudice to Article 13 of the Law, the issuer is not required to differentiate between own shares and other shares for the disclosure of the total number of voting rights and capital.

¹⁰ The six-day time limit results from the joint reading of Article 11(2) of the Law and Article 10 of the Grand-ducal Regulation.

¹¹ Article 18(2).

¹² Even though the participating shares referred to in Article 37 of the Law on commercial companies are not part of the capital, the voting rights that might be attached thereto must be included in the total number of voting rights, where applicable.

- The voting right which, in the context of specific decisions set out in Article 46(1) of the LCC, is attached to shares representing capital without voting rights of a Luxembourg company, shall not be included in the total number of voting rights, without prejudice to the obligation of the issuer to take them into account when providing information referred to in Article 16(2)(a) of the Law where resolutions concerning the issues referred to in Article 46(1) of the LCC are on the agenda of the general meeting.
- As soon as holders of shares without voting rights recover the same voting right as holders of ordinary shares, that voting right must be included in the total number of voting rights (as long as the voting right continues).

c. Form to be used for the notification of the activity as market maker

Article 8(4) of the Law provides that, under certain circumstances, the notification requirement set out in the first paragraph of that Article shall not apply to market makers for the acquisition or disposal of a major holding reaching or crossing the 5% threshold. Pursuant to Article 7 of the Grand-ducal Regulation, the market maker seeking to benefit from the above exemption shall notify to the CSSF, where Luxembourg is the home Member State of the issuer concerned, that it conducts or intends to conduct market making activities on a particular issuer. The same applies where the market maker ceases to conduct market making activities in respect of the issuer concerned.

In both cases, market makers shall use the form in ANNEX C to this circular.

It should be noted that Articles 2 and 3 of Commission Delegated Regulation (EU) 2015/761 of 17 December 2014 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings (hereinafter “**RTS on major holdings**”) provide details on the calculation of the 5 % threshold referred to in Article 8(4).

2. Notification requirement in the cases referred to in Article 9 of the Law

The persons entitled to exercise voting rights in accordance with Article 9 of the Law have to add these voting rights to those already held pursuant to Article 8.

As regards the different cases referred to in Article 9 of the Law, Article 9 of the Grand-ducal Regulation specifies certain circumstances in which the notification of major holdings must be made by the different persons and in the different situations listed in that Article. Where the duty to make a notification lies with more than one person, notification may be made by means of a single common notification. Nevertheless, each person having the obligation to notify remains individually responsible for ensuring that the content of the common notification is accurate and that it is made within the time limit and in accordance with the rules provided for in the Law and Grand-ducal Regulation.

In practice, the notification requirement applies to the following persons (if, following the event referred to in the respective articles, the proportion of voting rights held by these persons reaches, exceeds or falls below one of the thresholds referred to in Article 8):

- *Article 9(a) of the Law*

In the circumstances referred to in letter (a) of Article 9 of the Law, the notification requirement shall be a collective obligation shared by all parties to the agreement. Thus, all parties to the agreement must make a notification. These notifications may be made by means of a single common notification. In this case, the persons should be free to determine who, among them, will actually make the notification.

Moreover, all parties to the agreement are responsible for making a notification to the CSSF and to the issuer when the agreement comes to an end. Again, a single common notification shall be sufficient.

- *Article 9(b) of the Law*

The circumstances foreseen in Article 9(b) trigger the notification requirement at the same time for the person that acquires voting rights and is entitled to exercise them under an agreement and for the person transferring the voting rights temporarily and for consideration.

Under the terms of the agreement, both persons are required to notify the situation resulting from the termination of the agreement.

- *Article 9(c) of the Law*

If the person holding shares which are lodged as collateral controls the voting rights attaching thereto and declares its intention of exercising them, it is subject to the notification requirement. The person lodging the shares shall also notify the disposal of the rights attaching to these shares. A notification must also be made when the shares and voting rights attaching thereto are returned to the owner of the shares.

On the other hand, if the person lodging the shares as collateral maintains control and exercises the voting rights attaching to these shares, no notification is required.

- *Article 9(d) of the Law*

If the person having the usufruct in shares also holds the right to exercise the voting rights attaching thereto, it is subject to the notification requirement. In this case, the same applies to the person disposing of voting rights when the life interest is created. Both persons must make a notification when the life interest ends.

If no transfer of voting rights is involved, no notification is required.

- *Article 9(e) of the Law*

Without prejudice to Article 11(4) and (5), the person controlling an undertaking, including, inter alia, the ultimate beneficial owner of the voting rights, is required to aggregate its holdings with those held by the undertakings controlled. The notification to be made in accordance with Article 11(1) of the Law includes in this case the chain of controlled undertakings¹³ through which voting rights are effectively held (point 8 of the form in ANNEX A). The entire chain of controlled undertakings, starting with the ultimate beneficial owner of the voting rights, shall also be presented in the cases where a subsidiary individually exceeds or reaches one or several thresholds in order to always provide a complete and comprehensive picture of the group's holdings. In the case where the group's structure is very complex, the holder shall attach an organisational chart of the group to the notification.

In this context, the notification requirements of major holdings, provided for in Article 8, shall also apply to the ultimate beneficial owners (natural or legal persons) of the voting rights, held indirectly within the meaning of Article 9(e). The notion of controlled undertaking shall be understood in the meaning of the definition provided for in Article 1(4) of the Law.

In the circumstances referred to in Article 9(e) of the Law, the following two cases may arise:

- The controlled undertakings have an individual notification requirement

Where holdings of a controlled undertaking alone trigger the notification requirement in accordance with Articles 8, 9, letters (a), (b), (c) or (d), 12 and/or 12a of the Law, the controlled undertaking and the controlling person(s) are subject to the notification requirement. It should be noted that in accordance with Article 11(3) of the Law, a controlled undertaking is exempted from making the required notification if the notification is made by the parent undertaking in the name and on behalf of the controlled undertaking. It should be noted that the exemption provided for in Article 11(3) shall also apply when the notification is made in the name and on behalf of the controlled undertaking by the ultimate beneficial owner of the voting rights, in particular, if the latter is a natural person.

- The controlled undertakings do not have an individual notification requirement

Where the controlled undertakings do not individually reach one of the thresholds provided for in Article 8 of the Law, the controlled undertakings are not individually subject to the notification requirement.

¹³ The controlling person making the notification is always required to indicate all the names of the intermediary companies directly or indirectly controlled by it and is required to indicate the proportion of the voting rights of each of these entities in the issuer with a holding exceeding or equal to the minimum threshold of 5%.

However, if by aggregating the direct or indirect holdings, one of the thresholds provided for in Article 8 is crossed, the controlling person which is entitled to exercise the voting rights attaching to the holdings of the undertakings controlled shall make a notification where either the total holdings of the controlled undertakings alone, or the sum of this total and of its own holdings crosses one of the thresholds provided for in Article 8 of the Law.

- *Article 9(f) of the Law*

Where shares to which voting rights are attached are deposited with a third person, no notification is required if the voting rights remain with the person that deposits its shares.

If, on the other hand, the deposit taker may exercise the voting rights at his/her discretion pursuant to an agreement¹⁴ entered into with the depositor, the former, as well as the person having disposed of its voting rights, are required to make a notification.

However, if the deposit taker exercises the voting rights, in accordance with the instructions received from the depositor, no notification is required.

Where the entitlement to exercise voting rights has been transferred, the persons having crossed one of the thresholds provided for in Article 8 of the Law are required to make a notification when the entitlement to exercise voting rights is transferred back to the shareholder.

- *Article 9(g) of the Law*

In the circumstance foreseen in Article 9(g) of the Law, the person that actually holds the voting rights and is therefore entitled to exercise the voting rights, in its name or in the name of another person, is required to make a notification if one of the thresholds provided for in Article 8 of the Law is crossed. In this case a transfer of ownership of the securities concerned is not necessary.

Where the voting rights are transferred and thresholds crossed, all the parties having crossed one of the thresholds referred to in Article 8 of the Law are required to make a notification. However, the notification requirements of the different parties may be met by way of a single notification, provided that this single declaration includes all the information required in order to give a complete and comprehensive picture of the situation.

- *Article 9(h) of the Law*

If the proxy holder may exercise voting rights in the absence of contrary instructions from the shareholder, a notification is required. The same applies to the shareholder who has explicitly conferred its voting rights on the proxy holder.

¹⁴ For example, in the context of a custody agreement or general terms and conditions.

Upon termination of the agreement, both parties are again subject to the notification requirement when crossing a threshold.

It should be noted that if voting rights are conferred on a proxy holder on one occasion only (e.g. general meeting), the proxy holder as well as the shareholder may make one single notification in which they confirm that the voting rights are only transferred on a temporary basis and for a unique occasion (which must be specified). They shall also specify what the situation will be after the unique exercise of the voting right.

3. Specific financial instruments referred to in Article 12 of the Law

The notification requirements laid down in Article 8 of the Law shall also apply to a natural or legal person that holds, directly or indirectly:

- financial instruments that, on maturity, give the holder, under a formal agreement, either an unconditional right to acquire or the discretion as to his right to acquire, shares to which voting rights are attached and already issued; and/or
- financial instruments which are not included in the first indent above but which are referenced to shares referred to in this indent and with economic effect similar to that of the financial instruments referred to in this indent, whether or not they confer a right to a physical settlement.

The exemptions provided for in Articles 8¹⁵ and 11¹⁶ of the Law also apply in the context of Article 12.

Article 12(3) of the Law specifies that the term “financial instrument” (meeting the criteria set forth in one of the above-mentioned indents) refers to transferable securities, options, futures, swaps, forward rate agreements, contracts for differences and any other contracts or agreements with similar economic effects which may be settled physically or in cash, provided that they meet any of the conditions set out above.

Moreover, only instruments that fulfil the following conditions are concerned by the first indent above:

- They give the right to acquire and not to sell. A put option is thus not considered as a financial instrument in accordance with Article 12 of the Law. Instruments resulting in an entitlement to sell shall thus not be considered at all when calculating the proportion of the potential voting rights. Thus, a call option and a put option referring to the shares of a same issuer do not cancel each other out. The person holding these two instruments must only consider the option to acquire underlying shares when calculating the proportion referred to in Article 8 of the Law.

¹⁵ Paragraphs 3, 4 and 5.

¹⁶ Paragraphs 3, 4 and 5.

- They give an unconditional right to the holder or a discretion as to his right but not to the issuer or a third party.
- It is an unconditional right or a discretion as to the right to acquire the underlying shares. In the case of an unconditional right, the exercise of this right can thus not depend on external factors, such as the price of the underlying share for example. However, the ability to acquire underlying shares refers to the agreements which provide for the mere possibility of a physical settlement, i.e. in shares.
- The unconditional right or discretion as to the right to acquire the underlying shares must be provided for in a formal agreement, i.e. pursuant to an agreement which is binding under the law.

It should be noted that ESMA has drawn up and regularly updates an indicative list of financial instruments that are subject to the notification requirements according to Article 12(1). This list is available on ESMA's website or the CSSF website (section Supervision > Securities markets > Transparency > European documentation).

As far as the specific financial instruments referred to in Article 12 are concerned, it is noted that the number of voting rights shall, in principle, be calculated by reference to the full notional amount of underlying shares.

Financial instruments providing exclusively for a cash settlement, constitute an exception to this rule. In this case, the number of voting rights shall be calculated on a delta-adjusted basis, by multiplying the notional number of underlying shares by the delta of the instrument¹⁷. When notifying specific financial instruments providing exclusively for a cash settlement, the holder shall follow the instructions below:

- s/he shall aggregate and notify all the financial instruments relating to the same underlying issuer;
- in the same way as for the other financial instruments referred to in Article 12, only the long positions shall be taken into account for the calculation of voting rights;
- long positions shall not be netted with short positions relating to the same underlying issuer;
- the number of voting rights shall be calculated in accordance with the provisions of the RTS on major holdings, and
- in the case where the holder in question has already made a notification for the same issuer and changes his/her generally accepted standard pricing model

¹⁷ Upon request by the CSSF, the holder may be required to provide it with precise information on the determination of the delta, as provided for in Article 12(2) of the Law and Article 5 of the major holdings RTS.

referred to in Article 5 of the RTS on major holdings, a mention hereto shall be made in his/her notification.

Finally, the notification only mentions the identity of the issuer of the underlying shares which may be acquired and not the identity of the issuer of the financial instruments.

4. European documentation

In addition to the various specifications already outlined in this circular, it should be noted that Articles 2, 3 and 6 of the RTS on major holdings further clarify the exemption provided for in Article 8(5) of the Law concerning the voting rights held in the trading book.

Article 4 of the RTS on major holdings provides details on the calculation of the voting rights in the event of financial instruments referenced to a basket of shares or an index.

The table below includes the different articles of the RTS on major holdings and the articles of the Law to which they relate:

RTS on major holdings	Law
Article 2 Aggregation of holdings	Article 8(4) and (5)
Article 3 Aggregation of holdings in the case of a group	Article 8(4) and (5)
Article 4 Financial instruments referenced to a basket of shares or an index	Article 12(2)
Article 5 Financial instruments which provide exclusively for a cash settlement	Article 12(2)
Article 6 Client-serving transactions	Article 8(5)

As a reminder, ESMA has drawn up and regularly updates an indicative list of financial instruments that are subject to notification requirements in accordance with Article 12(1).

Moreover, ESMA published on 22 October 2015 Questions and Answers (ESMA/2015/1595) that provide more practical details as regards the notification requirements for major holdings.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Françoise KAUTHEN	Claude SIMON	Simone DELCOURT	Claude MARX
Director	Director	Director	Director General

Annexes:

Annex A: [Form to be used for the purposes of notifying the acquisition or disposal of major holdings](#)

Annex A bis: [Complement to Annex A](#)

Annex B: [Form to be used for the disclosure of the total number of voting rights and capital](#)

Annex C: [Form to be used for the notification by market makers](#)

ANNEX A: Standard form for notification of major holdings

Form to be used for the purposes of notifying a change in major holdings pursuant to the modified law and grand-ducal regulation of 11 January 2008 on transparency requirements for issuers (referred to as “the Transparency Law” and “the Transparency Regulation”)

NOTIFICATION OF MAJOR HOLDINGS (to be sent to the relevant issuer and to the CSSF)ⁱ

1. Identity of the issuer or the underlying issuer of existing shares to which voting rights are attached:

2. Reason for the notification (please tick the appropriate box or boxes):

- An acquisition or disposal of voting rights
 An acquisition or disposal of financial instruments
 An event changing the breakdown of voting rights
 Other (please specify)ⁱⁱⁱ:

3. Details of person subject to the notification obligation^{iv} :

Name: _____ City and country of registered office (if applicable): _____

4. Full name of shareholder(s) (if different from 3.)^v:

5. Date on which the threshold was crossed or reached^{vi}:

6. Total positions of person(s) subject to the notification obligation:

	% of voting rights attached to shares (total of 7.A)	% of voting rights through financial instruments (total of 7.B.1 + 7.B.2)	Total of both in % (7.A + 7.B)	Total number of voting rights of issuer ^{vii}
Resulting situation on the date on which threshold was crossed or reached	%	%	%	
Position of previous notification (if applicable)	%	%	%	

7. Notified details of the resulting situation on the date on which the threshold was crossed or reached^{viii}:				
A: Voting rights attached to shares				
Class/type of shares ISIN code (if possible)	Number of voting rights ^{ix}		% of voting rights	
	Direct (Art. 8 of the Transparency Law)	Indirect (Art. 9 of the Transparency Law)	Direct (Art. 8 of the Transparency Law)	Indirect (Art. 9 of the Transparency Law)
			%	%
			%	%
			%	%
SUBTOTAL A (Direct & Indirect)			%	

B 1: Financial Instruments according to Art. 12(1)(a) of the Transparency Law				
Type of financial instrument	Expiration date ^x	Exercise/ Conversion Period ^{xi}	Number of voting rights that may be acquired if the instrument is exercised/ converted.	% of voting rights
				%
				%
				%
SUBTOTAL B.1				%

B 2: Financial Instruments with similar economic effect according to Art. 12(1)(b) of the Transparency Law					
Type of financial instrument	Expiration date ^x	Exercise/ Conversion Period ^{xi}	Physical or cash settlement ^{xii}	Number of voting rights	% of voting rights
					%
					%
					%
SUBTOTAL B.2					%

8. Information in relation to the person subject to the notification obligation:

(please tick the applicable box)

Person subject to the notification obligation is not controlled by any natural person or legal entity and does not control any other undertaking(s) holding directly or indirectly an interest in the (underlying) issuer.^{xiii}

Full chain of controlled undertakings through which the voting rights and/or the financial instruments are effectively held starting with the ultimate controlling natural person or legal entity^{xiv} (please provide a separate organisational chart in case of a complex structure):

N°	Name ^{xv}	% of voting rights held by ultimate controlling person or entity <u>or</u> held directly by any subsidiary if it equals or is higher than the notifiable threshold	% of voting rights through financial instruments held by ultimate controlling person or entity <u>or</u> held directly by any subsidiary if it equals or is higher than the notifiable threshold	Total of both	Directly controlled by (use number(s) from 1 st column)
		%	%	%	
		%	%	%	
		%	%	%	
		%	%	%	
		%	%	%	

9. In case of proxy voting:

The proxy holder named _____ *will cease to hold* _____ *% and* _____ *number of voting rights as of* _____ .

10. Additional information^{xvi}:

Done at

On

ANNEX A bis: Notification of major holdings

(Complement to ANNEX A/only to be filed with the CSSF and not with the relevant issuer)

A: Identity of the person subject to the notification obligation
Full name (including legal form for legal entities)
Contact address (registered office for legal entities)
E-Mail
Phone number/Fax number
Other useful information (at least legal a contact person for legal persons)

B: Identity of the notifier, if applicable
Full name
Contact address
E-Mail
Phone number/Fax number
Other useful information (e.g. functional relationship with the person or legal entity subject to the notification obligation)

C: Additional information:

Notes

ⁱ Please note that national forms may vary due to specific national legislation (Article 3(1a) of Directive 2004/109/EC) as for instance the applicable thresholds or information regarding capital holdings.

ⁱⁱ Full name of the legal entity and further specification of the issuer or underlying issuer, provided it is reliable and accurate (e.g. address, LEI, domestic number identity).

ⁱⁱⁱ Other reason for the notification could be voluntary notifications, changes of attribution of the nature of the holding (e.g. expiring of financial instruments) or acting in concert.

^{iv} This should be the full name of (a) the shareholder; (b) the natural person or legal entity acquiring, disposing of or exercising voting rights in the cases provided for in Article 9 (b) to (h) of the Transparency Law; or (c) the holder of financial instruments referred to in Article 12(1) of the Transparency Law.

As the disclosure of cases of acting in concert may vary due to the specific circumstances (e.g. same or different total positions of the parties, entering or exiting of acting in concert by a single party) the standard form does not provide for a specific method how to notify cases of acting in concert.

In relation to the transactions referred to in points (b) to (h) of Article 9 of the Transparency Law, the following list is provided as indication of the persons who should be mentioned:

- in the circumstances foreseen in letter (b) of Article 9 of that Law, the natural person or legal entity that acquires the voting rights and is entitled to exercise them under the agreement and the natural person or legal entity who is transferring temporarily for consideration the voting rights;

- in the circumstances foreseen in letter (c) of Article 9 of that Law, the natural person or legal entity holding the collateral, provided the person or entity controls the voting rights and declares its intention of exercising them, and natural person or legal entity lodging the collateral under these conditions;

- in the circumstances foreseen in letter (d) of Article 9 of that Law, the natural person or legal entity who has a life interest in shares if that person or entity is entitled to exercise the voting rights attached to the shares and the natural person or legal entity who is disposing of the voting rights when the life interest is created;

- in the circumstances foreseen in letter (e) of Article 9 of that Law, the controlling natural person or legal entity and, provided it has a notification duty at an individual level under Article 8, under letters (a) to (d) of Article 9 of that Law or under a combination of any of those situations, the controlled undertaking;

- in the circumstances foreseen in letter (f) of Article 9 of that Law, the deposit taker of the shares, if he can exercise the voting rights attached to the shares deposited with him at his discretion, and the depositor of the shares allowing the deposit taker to exercise the voting rights at his discretion;

- in the circumstances foreseen in letter (g) of Article 9 of that Law, the natural person or legal entity that controls the voting rights;

- in the circumstances foreseen in letter (h) of Article 9 of that Law, the proxy holder, if he can exercise the voting rights at his discretion, and the shareholder who has given his proxy to the proxy holder allowing the latter to exercise the voting rights at his discretion (e.g. management companies).

^v Applicable in the cases provided for in Article 9 (b) to (h) of the Transparency Law. This should be the full name of the shareholder who is the counterparty to the natural person or legal entity referred to in Article 9 of that Law unless the percentage of voting rights held by the shareholder is lower than the 5% threshold for the disclosure of voting rights holdings (e.g. identification of funds managed by management companies).

^{vi} The date on which threshold is crossed or reached should be the date on which the acquisition or disposal took place or the other reason triggered the notification obligation. For passive crossings, the date when the corporate event took effect.

vii The total number of voting rights shall be composed of all the shares, including depository receipts representing shares, to which voting rights are attached even if the exercise thereof is suspended.

viii If the holding has fallen below the 5% threshold, please note that it is not necessary to disclose the extent of the holding, only that the new holding is below that threshold.

ix In case of combined holdings of shares with voting rights attached "direct holding" and voting rights "indirect holding", please split the voting rights number and percentage into the direct and indirect columns – if there is no combined holdings, please leave the relevant box blank.

x Date of maturity/expiration of the financial instrument i.e. the date when right to acquire shares ends.

xi If the financial instrument has such a period – please specify this period – for example once every 3 months starting from [date].

xii In case of cash settled instruments the number and percentages of voting rights is to be presented on a delta-adjusted basis (Article 12(2) of the Transparency Law).

xiii If the person subject to the notification obligation is either controlled and/or does control another undertaking then the second option applies.

xiv The full chain of controlled undertakings starting with the ultimate controlling natural person or legal entity also has to be presented in the cases in which only on subsidiary level a threshold is crossed or reached and the subsidiary undertaking discloses the notification as only then the market always gets the full picture of the group holdings. In case of multiple chains through which the voting rights and/or financial instruments are effectively held the chains have to be presented chain by chain leaving a row free between different chains (e.g.: A, B, C, free row, A, B, D, free row, A, E, F etc.). Numbers shall be attributed to all persons or entities within the group in column 1 in order to allow a clear indication of the control structure in column 6. The names of all undertakings of the control chain shall be provided in column 2, even if the number of the directly held voting rights and/or financial instruments is not equal or higher than the notifiable threshold. Columns 3 & 4 shall indicate the holdings of those persons or entities directly holding the voting rights and/or financial instruments if the holding is equal or higher than the notifiable threshold.

xv The names of controlled undertakings through which the voting rights and/or financial instruments are effectively held have to be presented irrespectively whether the controlled undertakings cross or reach the lowest applicable threshold themselves.

xvi Example: Correction of a previous notification.

ANNEX B

**Form to be used for the disclosure of the total number of voting rights and capital,
in accordance with the Law and Grand-ducal Regulation of 11 January 2008 on
transparency requirements for issuers**

1. Identity of the issuer or the underlying issuer of existing shares to which voting rights are attachedⁱ (including the issuer reference number allocated by the CSSF)
2. Identity of the notifier (if another person makes the notification on behalf of the issuer)
3. Total number of shares composing the share capital of the notifying issuer
4. Total number of voting rights attached to the shares composing the share capital of the notifying issuer, including the suspended voting rightsⁱⁱ
5. Total number of voting rights, excluding suspended voting rights (exercisable voting rights) (optional)
6. Origin of the changeⁱⁱⁱ
7. Date when the change occurred
8. In the previous notification (optional)
 - the total number of shares was of
 - the total number of voting rights was of
 - the total number of exercisable voting rights was of

ⁱ Either the full name of the legal entity or another method for identifying the issuer or underlying issuer, provided it is reliable and accurate.

ⁱⁱ For further details on the total number of voting rights, please refer to point 1(b) of Circular CSSF 08/349.

ⁱⁱⁱ As, for example, a capital increase or reduction.

ANNEX C

Form to be used for the notification by market makers, to be filed in accordance with the Law and Grand-ducal Regulation of 11 January 2008 on transparency requirements for issuers

1. Identity of the Market Maker:

Full name (including legal form for legal entities):
.....
Contact address (registered office for legal entities):
.....
.....
Phone number, fax and e-mail address:
.....
Other useful information (at least a contact person for legal persons):

2. Identity of the notifier [if another person makes the notification on behalf of the market maker mentioned in point (1)]:

Full name:
.....
Contact address:
.....
.....
Phone number, fax and e-mail address:
.....
Other useful information (e.g. functional relationship with the person or legal entity subject to the notification obligation):

3. Reason for notification

The Market Maker mentioned in point (1) intends to conduct market making activities in relation to the following issuer:

The Market Maker mentioned in point (1) ceases to conduct market making activities in relation to the following issuer:

Issuer	
--------	--

4. Where the Market Maker mentioned in point (1) intends to conduct market making activities, please indicate:

- the Competent Authority that authorised
the Market Maker under Directive
2004/39/EC:

- when this authorisation was obtained:

5. The Market Maker mentioned in point (1) declares that it does not intervene in the management of the issuer identified in (3) nor exerts any influence on that issuer to buy such shares or back the share price.

Done at [*place*] on [*date*]