



FRANKLIN TEMPLETON
INVESTMENTS

Franklin Resources, Inc.

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1 June 2016

Finansdepartementet
P.O. Box 8008 Dep
0030 Oslo

Sent via email

RE: Proposal for Transposition of the Revised Transparency Directive

Dear Sir/Madam:

I am writing on behalf of Franklin Resources, Inc., a global investment manager that operates under the name Franklin Templeton Investments (“Franklin Templeton”). Franklin Templeton provides global and domestic investment management services to retail, institutional and sovereign wealth clients in over 180 countries. Franklin Templeton has offices in 35 countries, 13 global trading desks, and at 30 April 2016, had more than \$747 billion (U.S.) in assets under management.

Franklin Templeton appreciates the opportunity to comment on the proposal for transposition of the revised Transparency Directive in Norway, cf. letter 2 March 2016 from the Ministry of Finance and proposal NOU 2016:2 with respect to the deadline for filing notification of major holdings (Norwegian: “frist for flaggemelding”). We participated in the development of, and broadly endorse, the comment letter on this proposal filed by ICI Global, the international arm of the Investment Company Institute. ICI Global seeks to advance the common interests and promote public understanding of regulated investment funds, their managers, and investors. Its policy agenda focuses on issues of significance to funds in the areas of financial stability, cross-border regulation, market structure, and pension provision.

We note that the committee is divided in its view regarding the question of the deadline. Franklin Templeton supports the proposal of the minority to extend the deadline for filing notifications of major holdings.

We further note that the committee has proposed to have the specific rules on the deadline for filing notifications of major holdings be set out in a regulation to be adopted by the Ministry of Finance. We are of the opinion that the deadline should be stated in the Securities Trading Act (STA) itself as it is today, and not relegated to a regulation to be adopted at a later stage.

The deadline should be extended

The provision concerning the deadline for filing in the Transparency Directive has been amended marginally. Article 12.2 of the Transparency Directive now reads:

The notification to the issuer shall be effected promptly, but not later than four trading days after the date on which the shareholder, or the natural person or legal person referred to in Article 10,

(a) learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect; or

(b) is informed about the event mentioned in Article 9(2).

The amendments are marginal, with the exception that the absolute deadline of four trading days has been reduced by replacing “four trading days, the first of which shall be the day after the date on which ...”, with “trading days after the date on which...”.

The current rules

While the Transparency Directive itself provides for an absolute deadline of four trading days, countries within the European Union are permitted to set their own different requirements which, in the case of Norway, are much stricter than required by the Transparency Directive or established by most other EU jurisdictions. In Norway, the current deadline for filing shareholder disclosure notifications is set out in the STA section 4-3(5) is “immediately”:

Melding etter denne paragraf skal gis straks etter at avtale om erverv eller avhendelse er inngått, eller vedkommende blir kjent med eller burde ha blitt kjent med annen omstendighet som fører til at vedkommende når, passerer eller faller under en terskel i første ledd.

Consequently, the STA does not set any absolute deadline (maximum of trading days) as is the case in the Transparency Directive. As mentioned in NOU 2016:2, paragraph 4.9.1, the deadline may be exercised with some degree of discretion from the Financial Supervisory Authority of Norway (FSAN). However, the concept of “immediately” has been interpreted in a strict manner. The FSAN also has a very strict supervisory practice as set out in its guidance note to the STA chapter 3 (“*Lov om verdipapirhandel – enkelte kommentarer til kapittel 3 og 4*”, paragraph 13.8) and its decisions concerning violation charges.

In and of itself, this degree of supervisory discretion raises questions concerning legal certainty and consistency in application of the requirements especially considering that a breach of the filing duty is a punishable offense. We do not agree with the majority of the committee that the current “flexible practicing” of the rules has been beneficial, or indeed particularly flexible.

In its practice, the FSAN has sometimes allowed for international asset managers headquartered in a different time zone and filing on an aggregated basis, a maximum of two trading days deadline, counted from the day the trade (or the relevant other circumstance triggering a filing duty) occurred. This practice demonstrates that the deadline may be officially extended without causing disruption to the markets.

Asset managers established outside Norway and in a later time zone face difficulties in complying with Norwegian requirements due to the time zone alone. These difficulties are

compounded when filings are made on an aggregated/consolidated basis for multiple accounts/funds, managed from different locations around the world and in different time zones. The revised Transparency Directive also extends the basis for calculating positions to include certain derivative positions, which will further add complexity to the notification process.

In practice, calculating positions for purposes of submitting required notifications is based on reviews of the global holdings of a manager and any of its affiliates, and the funds and accounts for which they each act as discretionary investment managers. Franklin Templeton has internal systems and reporting procedures that seek to ensure that holdings are monitored as promptly as possible. Using these systems and procedures, trading activity is reviewed and security positions are aggregated on a daily basis at the close of business where the manager and the relevant trading desk is located. Our systems do not calculate global positions on a real time basis. Franklin Templeton operates thirteen global trading desks. Our security positions are gathered across the world-wide markets and incorporated into our internal systems overnight in the United States so that the earliest possible time that holdings can be reviewed for notification purposes is trade date plus one Eastern time. This makes it impossible to meet a standard of “immediate” notification in Norway as, by this time, the local markets in Norway have closed for the day. We are of the opinion that our systems and procedures allowing calculation of positions at the end of trading in multiple global markets are consistent with the market practices of internationally established investment management firms and, are not aware of other firms that are comparable to our size and scope that have IT systems offering a higher degree of “real time” aggregation of holdings for substantial shareholder reporting purposes.

The amended Transparency Directive also introduces a substantially stricter sanctions regime, cf. Article 28b of the amending directive, with administrative pecuniary sanctions of up to EUR 10 000 000 or up to 5 % of the total annual turnover according to the last available annual accounts approved by the management. Coupled with more extensive notification duties with respect to types of instruments to be included in the notifications, this would result in an even more strict regulation unless the deadline is also extended.

As mentioned in NOU 2016:2 page 41, the “immediate” deadline differs significantly between different EU and EEA member states and the Norwegian rules are among the relatively few jurisdictions with very strict rules on this point. The current deadline rules for other EU and EEA member states are attached hereto as Schedule I. As noted on Schedule I, the allowed timeframe to submit required notification varies from two trading days to within five trading days. Of the twenty European countries listed, only Norway and Denmark require “immediate” disclosure. These rules which are stricter and different from other EU member states will – on the balance – make the Norwegian market less attractive for foreign institutional investors, as compared to other markets, especially in light of the potential penalties for late notifications.

Based on this, we support the minority view that the deadline should be extended so that there is a maximum deadline of four trading days, and that the provision should read:

Melding etter denne paragraf skal gis uten ugrunnet opphold og senest fire handelsdager etter at avtale om erverv eller avhendelse er inngått, eller

vedkommende blir kjent med eller burde ha blitt kjent med annen omstendighet som fører til at vedkommende når, passerer eller faller under en terskel i første ledd.

The deadline should be stated in the Securities Trading Act

Breach of the duty to file shareholder notifications is an offense punishable by fines (cf. section 17-3(3) of the Securities Trading Act, the “STA”). Further, the Financial Supervisory Authority of Norway has the authority to issue violation charges for breach of the filing duty (cf. section 17-4(1)). For practical purposes, a violation charge works as a fine.

We may add that, for investment management organizations such as Franklin Templeton Investments, sanctions from a regulatory authority such as a violation charge imposed under the STA or otherwise by the Financial Supervisory Authority may trigger multiple disclosure requirements imposed by other regulatory authorities such as the U.S Securities and Exchange Commission, federal, state and local level supervisory authorities, as well as to our clients and investors.

The revised Transparency Directive introduces a stricter sanction regime, with higher potential violation charges. In addition, a regulation most likely would be adopted closer to entry into force of the rules. This would leave less time for market actors to adapt, something that is particularly important for foreign institutional investors with regular business hours that do not coincide with Norwegian business hours.

On this background, we respectfully suggest that the deadline for filings be extended consistent with the Transparency Directive to allow for a maximum deadline of four trading days and that the deadline be clearly stated in the STA itself. This would enable more accurate reporting, better compliance with disclosure obligations and help ensure accessibility, clarity and certainty for all market participants. It would also help to ensure consistent application of the reporting obligations and penalties for violations thereof.

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We appreciate your consideration of our comments. If you have any questions please contact me at 954-847-2283 or subsshholder@franklintempleton.com

Sincerely,



Lori A. Weber
Assistant Secretary

cc: Markus Heistad
BA-HR

Eva Mykolenko
Associate Chief Counsel – Securities Regulation

Schedule 1 Overview of filing deadlines in Europe

Country	Timeframe
Austria	Two business days after trade date
Belgium	Trade date plus four days
Czech Republic	Three business days
Denmark	Immediate
Finland	“Without undue delay”, however, no later than the trading day following the day when shareholder becomes aware of a threshold having been crossed
France	Within five days
Germany	Four days from trade date
Greece	Trade date plus three days
Ireland	Within two trading days
Italy	Within five business days of trade date
Luxembourg	Within four trading days
Netherlands	Within four trading days
Norway	Immediate
Portugal	Four business days after trade date
Romania	Three days after trade date
Spain	Within four business days
Sweden	Trade date plus three days
Switzerland	Four trading days
Turkey	Trade date plus three days
United Kingdom	Two trading days