Consultation Response

ESMA Call for Evidence on the Implementation of SRDII Provisions

November 2022

The Association for Financial Markets in Europe (AFME) and the Association of Global Custodians (AGC) welcome the opportunity to comment on **ESMA's Call for Evidence on the implementation of SRDII provisions.**

Our response covers Section 3.2.2 (general questions) and Section 6 (specific questions for intermediaries).

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

Established in 1996, the Association of Global Custodians (the "Association") is a group of 12 global financial institutions that each provides securities custody and asset-servicing functions primarily to institutional cross-border investors worldwide. As a non-partisan advocacy organization, the Association represents members' common interests on regulatory and market structure. The member banks are competitors, and the Association does not involve itself in member commercial activities or take positions concerning how members should conduct their custody and related businesses. The members of the Association are: BNP Paribas; BNY Mellon; Brown Brothers Harriman & Co; Citibank, N.A.; Deutsche Bank; HSBC Securities Services; JP Morgan; Northern Trust; RBC Investor & Treasury Services; Skandinaviska Enskilda Banken; Standard Chartered Bank; and State Street Bank and Trust Company.

Section 3.2.2

Q3: Do you consider that shareholder identification, within the meaning of Article 3a, has improved following the entry into application of this provision and the Implementing Regulation?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response. [Max. 2000 characters]

AFME and AGC members have anecdotally observed a significant increase in the volume of shareholder identification (SI) requests received, supporting the objective of improving transparency for issuers. We also

note an improvement in the level of standardisation and timeliness of the SI process. We believe that a greater percentage of requests received are able to be straight-through processed than prior to the entry into application of Article 3a. We note that this has been incremental progress over time, rather than an immediate step-change following entry into application.
However, there is still significant room for improvement in many areas.

Adoption of market standards for messaging: ISO 20022 messaging standards were developed by the Securities Market Practice Group (SMPG) to facilitate transmission of information in a machine-readable STP format. However, many market participants continue to use legacy communication methods in relation to shareholder identification requests.

We refer to the Corporate Events Group annual report for 2021[1] which assesses CSD's compliance with Shareholder Identification market standards, and highlights significant gaps in compliance by various types of market participant.

Critically, the inconsistent transposition of the Directive into national law (e.g. the lack of common definition of shareholder) undermines the effectiveness of Article 3a. To a large extent, national laws have not materially changed since the entry into application of SRDII.

We note that a bifurcation of SRDII and non SRDII processes remain. Members report that many SI requests are still received where requesters quote old legislation. In certain cases, requestors impose additional requirements beyond SRDII/market standards, which increases complexity for responders and leads to valid responses being rejected.

Q4: Do you consider that harmonising the definition of shareholder across the EU is a necessary step to ensure the full effectiveness of Article 3a provisions?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response, specifying any remaining obstacles to the process of identification of shareholders. [Max. 2000 characters]

The definition of shareholder for SRDII purposes still depends on the national law of each security's country of issuance. This is particularly problematic in cases of cross-border investment, which typically have longer custody chains (i.e. multiple intermediaries between issuer and end investor.) We consider that the objective of an issuer raising an identification request is to determine the end investors - the person or entity at the end of the chain. Specific examples of differences across Member States – and the implications of these differences - were set out in a position paper of the AGC-EFC (Appendix III), which largely have not been addressed since the date of SRD II's entry into application.

If, under applicable national laws, the shareholder is determined as an entity that is not the end investor, there are two main consequences.

[1] https://www.ecb.europa.eu/paym/intro/publications/pdf/ecb.amiseco202112_corporateevents.en.pdf?5bedb86af0c00cc42c4965bdaeaa5cf0

Firstly, the issuer does not have a legal right to obtain information about persons or entities further down the custody chain (including the end investor). If an intermediary further down the custody chain does provide this information, they risk doing so without the benefit of SRDII protections on the disclosure of this information and may thus be in breach of legal or contractual obligations. From an issuer perspective, therefore, it is unlikely that the shareholder identification request will determine the end investors.

Secondly, from an investor perspective, SRDII rights and obligations will not apply to persons or entities further down the chain. Thus, end investors may not be able to full exercise their rights.

A common pan-European definition of shareholder that identifies the end investor (or "ultimate account holder") as being the shareholder is therefore needed so that the party entitled to exercise rights that have been attributed to securities positions is properly identified on a harmonised basis.

Q5: In your opinion, who should be regarded as 'shareholder' for the purposes of the SRD if this definition was to be harmonised across the EU?

- [The natural or legal person on whose account or on whose behalf the shares are held, even if the shares are held in the name of another natural or legal person who acts on behalf of this person (beneficiary shareholder)]
- [The natural or legal person holding the shares in his own name, even if this person (nominee shareholder) acts on behalf of another natural or legal person]
- [Other]

Please explain and provide evidence to corroborate your response. [Max. 2000 characters]

We believe that the end investor (or "ultimate account holder" which does not act as intermediary or on behalf of an intermediary) should be regarded as being the shareholder for the purposes of SRD requirements, and as being the party entitled to exercise rights that have been attributed to securities positions. We note that this is in many cases the same as described in the first of the above options, although there are some important distinctions as noted below.

The approach of attributing ownership rights of securities in a custody chain to the "ultimate account holder" has three main benefits:

(i) there is a simple and clear rule to determine who the "ultimate account holder" is;
(ii) the approach is in line with the existing pan-European legislation (notably MiFID) and existing pan-European market standards; and
(iii) in most cases the approach is in line with the underlying economic reality (as in most cases the ultimate account holder has provided the funds to purchase the securities).

Some nuanced scenarios may exist in which the ultimate account holder is not the beneficiary shareholder – e.g. is not 'entitled' to receive the proceeds from a corporate action. This occurs when the ultimate account holder has a contractual arrangement in place with a third-party whereby the entitlement is transferred from the ultimate account holder to the third party.

Q6: Do you consider that the transmission of information along the chain of intermediaries has improved following the entry into application of Article 3b and the Implementing Regulation?

- [Not at all]

- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response. [Max. 2000 characters]

AFME and AGC members, who are typically intermediaries in wholesale capital markets, were already compliant to a large extent with the provisions of Article 3b, and supported the transmission of available information to clients in a timely and standardised manner. However, Article 3b has led to some further improvements in levels of standardisation – most notably in general meetings and shareholder identification processes. We note that there have been less noticeable improvements in corporate actions processes which were already subject to high levels of standardisation through the application of detailed market standards and monitoring processes to assess compliance with them.

An area of improvement would be for issuers who, as the source of information into the intermediary chain, should be legally obliged to use the same ISO formats used in the intermediary chain and with the same quality and timeliness as intermediaries. Such an obligation is essential in order to ensure straight-through-processing.

Q7: Do you consider that the facilitation of the exercise of shareholder rights by intermediaries has improved following the entry into application of Article 3c and the Implementing Regulation?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response. [Max. 2000 characters]

Before and since the entry into application of Article 3c, AFME and AGC members, acting as intermediaries in wholesale capital markets, do everything possible to facilitate exercising of shareholder rights, within the limitations of market specificities, such as requirements for national laws requiring physical attendance at meetings, or submission of physical documentation. We note that, to a large extent, these national-level specificities have not been addressed since the entry into application of Article 3c.

Further to this, we wish to note that SRDII enshrines transparency of post-meeting vote confirmation process as a right of shareholders. Due to varying market transpositions and implementations of the directive, there is a distinct lack of vote confirmations being issued from both the issuer and intermediary communities. This specifically impacts post meeting vote confirmations from issuers or issuer agents who seem unequipped to deliver such confirmations. Confirmations are a vital component to end investors to record, prove their compliance, and participation in the general meeting process and are increasingly required to validate ESG (Environmental Social Governance) credentials.

Analysis by Broadridge suggests that, where intermediaries are subject to SRD II provisions and utilise MX messaging, Broadridge is receiving roughly 28% CAST (seev.006 - RCIS) and 7% CONFIRMED (seev.007) status responses to outgoing voting instructions. In the vast majority of cases, this is because intermediaries have not received an incoming 'CAST' or 'CONFIRMED' message, so cannot transmit this onwards to their clients.

Q8: Do you consider that transparency, non-discrimination and proportionality of charges for services provided by intermediaries in connection with shareholder identification, transmission of information and exercise of shareholder rights (i.e., in compliance with Article 3d) have improved following the entry into application of this provision?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response, providing examples of the jurisdictions you are most familiar with. [Max. 2000 characters]

AFME and AGC members comply with SRDII requirements to disclose costs and charges.

However, we wish to note two points:

1. Lack of standards for Shareholder Identification reimbursements
   Currently, there is no harmonisation with respect to invoicing by intermediaries, which results in a lack of upfront transparency for issuers on what a shareholder identification request will cost, and difficulties for intermediaries when collecting fees for this service

2. Lack of clarity/harmonisation of handling of meeting distribution fees from intermediaries
   SRDII mandates no 'excessive' fees but does not provide further clarification or guidance in these areas:
   - Intermediaries charging investors for processing instructions
   - Intermediaries charging issuers for processing instructions
   - Issuer choosing to pay intermediaries for cost of processing instructions

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Q9: Do you consider that the practices of third-country intermediaries (i.e., intermediaries which have neither their registered office nor their head office in the EU but provide services with respect to shares of EU listed companies) are in line with the provisions of Chapter Ia and the Implementing Regulation?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response and specify any significant differences you may be aware of as regards the application of this Chapter by third-country intermediaries vis-à-vis EU intermediaries. [Max. 2000 characters]

To the extent possible third country intermediaries operate in line with the provisions of Chapter Ia and the Implementing Regulation. However, third country intermediaries are faced with the same challenges we articulate throughout this consultation response as EU registered intermediaries.

Q10: Do you consider that the processes put in place by intermediaries for the purpose of implementing Chapter Ia (i.e., shareholder identification, transmission of information and facilitation of the exercise of shareholder rights) are working in line with the relevant provisions of the SRD2 and the Implementing Regulation?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response, explaining if/how improvements could be made. [Max. 2000 characters]

AFME and AGC members, as intermediaries in wholesale capital markets, are fully compliant to the greatest extent possible with the requirements of Chapter Ia, notwithstanding restrictions arising from national-level transposition of the Directive.

Q11: Have you encountered any specific obstacles or difficulties in the practical application of the SRD2, namely Chapter Ia and the Implementing Regulation, also in light of the SRD2's transposition in Member States' national law (e.g., regarding transparency of fees when a service is provided by more than one intermediary in a chain of intermediaries or when the company is allowed to request the CSD, another intermediary or third party to collect information regarding shareholder identity)? Please specify your response in relation to the following topical areas:

a) Shareholder identification;

- [Y]
- [N]
- [Don't know]

b) Transmission of information;

- [Y]
- [N]
- [Don't know]

c) Facilitation of the exercise of shareholder rights;

- [Y]
- [N]
- [Don't know]

d) Costs and charges by intermediaries;

- [Y]
- [N]
- [Don't know]

e) Non-EU intermediaries.

- [Y]
- [N]
- [Don't know]

Please explain and provide evidence to corroborate your response, clarifying whether encountered obstacles or difficulties relate to cross border elements (both within and outside the EU). [Max. 2000 characters]

a) Shareholder identification;

- Lack of compliance with market standards for messaging
- out-of-scope requests in SRDII format
- Lack of disclosure response status messages.
- Lack of standards for cost reimbursement to intermediaries
- Collector adding own response format requirements or specific timing rules between responding intermediaries

b) Transmission of information;

- Lack of compliance with market standards for messaging
- Lack of electronic voting in certain markets
- Lack of use of ISO formats by issuers
- Issuers not held to the same standards of quality and timeliness as intermediaries
- The use of free format messaging breaks STP

c) Facilitation of the exercise of shareholder rights;

- Agendas being sent with incomplete information
- Inconsistencies in key dates
- Reliance on physical/manual processes and lack of electronic voting - e.g. POA requirements in certain markets
- Lack of transparency on post-meeting vote confirmation process
- Different processes for non-listed securities
- Lack of clarity/harmonisation of handling of meeting distribution fees from intermediaries

d) Costs and charges by intermediaries;

- Lack of standards for cost reimbursement to intermediaries
- Lack of clarity/harmonisation of handling of meeting distribution fees from intermediaries

e**) Non-EU intermediaries;**

- Please refer to our response to Q9

Q11.1: If you have answered positively to at least one of the points listed in Q11, please specify if it was in relation to the following:

a) The attribution and evidence of entitlements (incl. as regards the record date position);

- [Y]
- [N]
- [Don't know]

b) The sequence of dates for corporate actions and deadlines;

- [Y]
- [N]
- [Don't know]

c) Any additional national requirements (e.g., requirements of powers of attorney to exercise voting rights);

- [Y]
- [N]
- [Don't know]

d) Communication between issuers and central securities depositories (CSDs);

- [Y]
- [N]
- [Don't know]

e) Any other issue.

- [Y]
- [N]
- [Don't know]

Please explain and provide evidence to corroborate your response. [1 box per option, Max. 2000 characters]

a) Attribution and evidence of entitlements: We note that the Implementing Regulation confuses a confirmation of entitlement message (i.e. a message from an account provider to its client confirming a record date position) with a "proof of entitlement". As a consequence, the Implementing Regulation obliges intermediaries to send "confirmation of entitlement" messages containing information that the intermediary may well not have and that is, in any event, irrelevant for a "confirmation of entitlement" message. SRDII does not set out any operational process whereby a "proof of entitlement" could be accepted on a cross-border basis.

Further to this, in some countries, certain categories of rights are allocated based on positions recorded in a register (rather than those recorded by the Issuer CSD). If these two sets of records are not instantaneously and automatically synchronised, this may result in an investor not being able to exercise rights to participate in a meeting.

b) Sequence of dates: AFME and AGC members do not have specific concerns with respect to the sequencing of dates for corporate actions as outlined in Article 8 of SRDII and the appendices of the implementing regulation. The key issue to be addressed is the information contained in Section C, which is currently not mandatory for the issuer to provide. This creates a high-degree of uncertainty and difficulties for intermediaries.

c) Additional national requirements: In several jurisdictions POA requirements remain in place. At least 5 EU countries – Belgium, Hungary, Latvia, Norway, Sweden – have generic POA requirements and at least 4 EU

countries – Austria, Hungary, Portugal, Germany – have meeting-specific POA requirements. In additional, several countries have additional requirements related to registration and proof of entitlement in order to be able to confirm entitlement to vote. . Removal of such requirements would significantly improve the flow of information through the custody chain, and would likely result in increased voting in general meetings. As well as being an operational burden, POA requirements increase the likelihood of a vote being rejected.

d) Communication between issuers and CSDs: One notable issue is the lack of a 'golden operational record' which can lead to delays in communication through the chain, with intermediaries required to source information from multiple locations at different times.

e) Other:
End investor opt-out: Uncertainty persists as to whether end investors have a right to opt out from receiving general meeting notifications. SRDII obliges member states to ensure that intermediaries are required to transmit general meeting notifications to their clients. But this text gives few additional details, and it does not explicitly cover the question of whether and under what circumstances an end investor can opt out.
The Implementing Regulation in some respects does allow for shareholders to vary receipt of relevant information – or the modalities by which it is to be provided to them - by contract. Many in the industry have interpreted Article 2.4as allowing for end investors to select by contract the information they wish to receive, and in what form.. However, as this has not been explicitly and unambiguously set out this has led to a degree of confusion and legal uncertainty and the likelihood of inconsistent interpretation of what is permitted, and how. Particularly where national transpositions do not explicitly address "opt outs" The situation is, however, clear for cases where the end investor is not considered under national law to be the shareholder. In such a case, there is no obligation on the intermediary, so the end investor can exercise an "opt out".

Taking the above into account, last intermediaries are placed in a difficult position.

Firstly, they will need to determine what their policy is for securities for which the situation is unclear. Eliminating all legal risk might entail forcing all end investors to receive notifications of general meetings, even if the client explicitly refuses to receive such notifications. Without clear legal justification, such a step would be especially difficult to take for non-European last intermediaries with non-European clients.

Secondly, last intermediaries will need to manage any operational differences between securities for which an opt-out is possible, and those for which the situation is unclear.

Q12: If you have encountered any difficulties or obstacles to the fulfilment of obligations under Chapter Ia (also relating to cross border elements - both within and outside the EU - and in light of the SRD2's transposition in Member States' national law), how do you think improvements could be made going forward? Please specify your response in relation to:
a) Shareholder identification;
b) Transmission of information;
c) Facilitation of the exercise of shareholder rights;
d) Costs and charges by intermediaries;
e) Non-EU intermediaries.
Please explain and provide evidence to corroborate your response. [1 comment box per option, Max. 2000 characters each]

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a) Shareholder identification:

The provisions of SRD II should become a regulation to ensure harmonised application across jurisdictions. This should include a common definition of shareholder, as set out in our response to Q4/Q5, enshrined in the regulation.
It should be clarified that disclosure response status messages are a mandatory requirement.

b) Transmission of information:
Publication of meeting results in an electronic, machine-readable format should be a mandatory requirement. The STP process can be significantly disrupted due to the possibility for tables 3 and 8 to be only partially populated. If tables 3 and 8 are only partially filled and the URL link is referred to for the additional information, the STP process is broken.

c) Facilitation of the exercise of shareholder rights:
Removal of national-level requirements (e.g. POAs) which act as barriers to the exercise of shareholder rights.

d) Costs and charges by intermediaries:
Authorities should provide EU-level guidelines for costs and charges.

Q13: Overall, do you consider that Chapter Ia provisions have improved shareholder engagement, thereby supporting the long-term value creation and sustainability objectives established by the Directive?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response, also specifying what actions could be put in place to improve shareholder engagement. [Max. 2000 characters]

No response

Q14: Do you believe that rules on the following points should be further clarified and/or harmonized:

a) Attribution and evidence of entitlements (incl. as regards the record date position);

- [Y]
- [N]
- [Don't know]

With respect to general meetings and financial corporate actions, SRD II sets out requirements relating to the transmission of information (regarding general meetings and financial corporate actions), and on the facilitation by intermediaries of the exercise of rights. But SRD II does not set out requirements regarding the attribution of entitlements, such as the amount of voting rights in a general meeting, or the amount of new shares in a securities distribution.

One generally applicable rule on the attribution of entitlements or rights is that they are attributed based on booked security positions at the issuer CSD as of close of business on record date (even if there is a subsequent reallocation process based on pending transactions as of record date). Record dates should always be end-of-day dates. This approach is in line with the logic and approach of the CSD Regulation (CSDR), and, in particular, of Article 3 of CSDR which mandates that publicly-traded securities be issued in a CSD.

However, in some countries, some categories of rights are allocated based on security positions that are recorded in a register (for registered securities), and not on the positions recorded at the issuer CSD. If the register is automatically updated based on positions at the CSD, there is no problem, as the two sets of records are aligned. But if positions in the register are not automatically updated, and if an end investor holds as of record date a position that has been booked at the issuer CSD without that position being recorded in the register, the end investor will lose rights, and in many cases will lose the right to participate in a general meeting.

b) The sequence of dates for corporate actions and deadlines;

- [Y]
- [N]
- [Don't know]

SRD II does not set out requirements with respect to the timing of key dates for a general meeting or for a financial corporate action. This has a specific impact on the attribution of entitlements for general meetings. One notable problem occurs if the date for the attribution of entitlement (the "record date") is too close to the issuer deadline for voting instructions for that general meeting. If the gap in time between these two dates is too short, which is the case in some countries, then the consequences are that (i) some record date holders are not able to vote, and (ii) many end investors have to send voting instructions that anticipate their future record date positions (with the risk that these anticipated positions will be incorrect, in which case their votes will rejected, anyway). For securities that are provided as collateral, there is a related problem in that when a collateral giver issues its voting instruction it may not know who the future record date holder will be; accordingly, the voting instruction may contain incorrect information with respect to the shareholder, and thus may not comply with SRD II requirements.

It is relevant to note that the SRD II Implementing Regulation recognises this problem, as it contains a suggestion that the last intermediary in the custody chain (i.e. the service provider to the end investor) "may caution the shareholder as regards the risks attached to changes in the share position close to record date". It should, however, be said that this suggestion, as a solution to the underlying problem, is inadequate.

c) Possible additional national requirements (e.g., requirements of powers of attorney to exercise voting rights);

- [Y]
- [N]
- [Don't know]

National transpositions of SRD II have in most cases not adapted existing national operational processes to the processes contemplated in SRD II. For example, five European Union countries still require end investors to provide, in paper form, and in order to be able to exercise their votes, signed power of attorney documents.

Such requirements for power of attorney documents create differences in operational processes, and act as a barrier to the exercise of votes. They are an operational burden both for end investors, and for intermediaries, and they create the risk that a voting instruction will be rejected (for example, if the power of attorney is out-of-date or incorrect, or if the name on the power of attorney is not the same name as the name received by an issuer following a shareholder identification request).

In the framework of a common pan-European operational process for the exercise of voting rights, such requirements are unjustifiable, and are impossible to explain to end investors, whether they are located inside or outside the European Union.

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d) Transmission of information (incl. rules on communications between CSDs and issuers/issuer agents).

- [Y]
- [N]
- [Don't know]

We believe that a revised SRD should mandate that issuers and issuer agents provide a full "golden operational record" in an electronic, STP format for all general meetings and corporate events.

Issuers, who are the source of information according to the SRD II and the implementing regulation, would have to be legally mandated to use the ISO formats used in the intermediary chain and with the same timeliness and quality as intermediaries. Only a completely and correctly filled ISO message can be processed via STP.

AFME and AGC were amongst co-signatories on a letter to the European Commission in 2018, outlining why a "golden operational record" is essential to effectively harmonise and standardise the announcements process for corporate actions and general meetings, and provided some drafting suggestions to help achieve this.

Q15: For elements that are not explicitly covered by the above questions but that are still related to Chapter Ia or the Implementing Regulation, do you have any other issue that you want to raise? [Max. 2000 characters]

Scope of Securities subject to SRDII

As a result of differences in the national transpositions of SRD II, the range of the securities that fall within the scope of the SRD II requirements, may vary by country. SRD II gives member states the specific option to include, or not to include, interests in investment funds within the scope of SRD II requirements. In at least one country, national authorities have decided to apply SRD II requirements to securities, namely corporate bonds, that do not formally fall within the scope of SRD II. In several countries, there is uncertainty as to whether depositary receipts, either directly, with depositary receipts being categorised as in-scope securities, or indirectly, with a holder of a depositary receipt being identified as a shareholder of the underlying shares, are within the scope of the SRD II requirements.

Differences in the scope of securities create problems, as it may not be clear to an intermediary or custodian or end investor located in a different country which securities fall within the scope of the requirements, and which do not. For example, an issuer located in one country may issue corporate bonds in a different country, and under a different national law. Uncertainty as to the applicability of the requirements creates both a risk

of a lack of compliance, and a risk of over-compliance (i.e. risk of compliance without the necessary legal basis, and without the necessary legal protections).

The industry would benefit from a clear definition of what is in scope and out of scope, harmonised across all jurisdictions, including details on the identities of authorised issuer agents.

Section 6

Q59: Have you encountered any doubt or ambiguity in assessing which Member State and NCA is competent over your activities in this area?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response, identifying what legislative changes could be made, if any. [Max. 2000 characters]

AFME and AGC members do not consider this as a significant issue. However, as noted in previous responses, members wish to highlight that there are areas where national law and SRD II provisions differ. There are also explicit references in some parts of SRD II which defer to national law, such as the topic of shareholder identification.
One specific issue may arise with respect to the scope of securities subject to SRD II, in circumstances where an issuer located in one country issues corporate bonds in a different country and under a different national law. There is uncertainty as to the applicability of the requirements, creating risk of both non-compliance and over-compliance.

Q60: How frequently do you receive shareholder identification requests when compared to the pre-SRD2 period?

- [More frequently]
- [With the same frequency as before]
- [Less frequently]

Please explain and provide specific data to corroborate your response. [Max. 2000 characters]

Members anecdotally observe an increase in volumes of shareholder identification requests. SRD II has provided the industry with the impetus to develop a standardised messaging framework to enable systemic processing of shareholder disclosure requests.

We note that there is still a large volume of requests received which cite historic national legislation as their basis, rather than SRD II provisions. AFME and AGC encourage that all issuers submit requests under SRD II.
AFME and AGC members observe that the increase in requests in not evenly split across all markets. Generally, we note that the greater increase in frequency has occurred in markets which did not previously have disclosure processes embedded in national law.

Q61: Following the entry into application of the SRD2, when receiving a shareholder identification request, have you encountered obstacles in providing all the required information regarding shareholder identity to requesting issuers?

- [Y]
- [N]
- [Don't know]

Please explain and provide evidence to corroborate your response. Please also clarify how long it takes you to provide the requested information and if the obstacle was related to the identification of a "beneficiary shareholder" on whose account the shares are held by a nominee shareholder in its own name. [Max. 2000 characters]

The principal obstacle arises from conflicts or discrepancies between SRD II and national-level legislation. As previously noted, the definition of shareholder in some jurisdictions prevents the identification of the ultimate account holder. Certain countries also impose additional information beyond that required by SRDII, which the intermediary may not have access to, or have differing scopes of securities subject to SRDII, which increases complexity for intermediaries.

There is also a significant amount of validation that intermediaries must performed. For example, to check and confirm if the ISIN is in scope, to authenticate that the agent has been appointed by the issuer and has the correct letter of authority, and whether the request is sent in the correct ISO 20022 messaging format.

Q62: With reference to the previous question, can you please describe if your response would change in connection to cross-border shareholder identification, especially when involving third-country intermediaries?

- [Y, with regard to all cross-border shareholder identification]
- [Y, with regard to cross-border shareholder identification involving a third-country intermediary]
- [N]
- [Don't know]

Please explain and provide evidence to corroborate your response. [Max. 2000 characters]

AFME and AGC note that this is dependent on the processes implemented by each intermediary – for example, whether they utilise internal or third-party solutions, whether their clients can send/receive ISO 20022 messages.

Q63: Following the entry into application of the SRD2, is the shareholder identification request and the relevant information required (e.g., shareholder identity data, etc.) always transmitted to you in a format which allows straight-through processing within the meaning of Article 2(3) of the Implementing Regulation?

- [Y]
- [N]
- [Don't know]

Please explain and provide evidence to corroborate your response, specifying what type of standard you use. [Max. 2000 characters].

We note that levels of STP have incrementally improved since the entry into application of the Implementing Regulation. However, it remains the case that some shareholder identification requests are received in non-STP formats (e.g. email) and quoting out-of-date legislation.

In general, AFME and AGC have observed that where requests are transmitted via the Issuer CSD, they are typically in an STP format and in line with market standards. Requests received directly from Issuers/agents have a much lower rate of STP.

Q64: Following the entry into application of the SRD2, do you communicate the information necessary for the exercise of shareholder rights (i.e., Article 3b) (e.g., general meeting notice, notice of participation, etc.) in a format which allows straight-through processing within the meaning of Article 2(3) of the Implementing Regulation?

- [Y]
- [N]
- [Don't know]

Please explain and provide evidence to corroborate your response. In case your answer is no, please explain why and if this causes any problems in practice. [Max. 2000 characters]

Typically speaking, AFME and AGC members, acting as intermediaries offer ISO 20022 messages, in line with market standards. Intermediaries may also offer alternative solutions, such as online portal services, for those clients who may not be able to consume ISO 20022 messages.

Q65: Following the entry into application of Article 3b, have you experienced any improvements in the downstream transmission of information to investors for the exercise of their rights along the chain of intermediaries?

- [Y]
- [N]
- [Don't know]

Please explain and provide evidence to corroborate your response, clarifying how long it took you to provide the requested information. [Max. 2000 characters]

There has been limited to no improvement in relation to corporate action and general meeting messaging. There has been an increase in the quantity of information transmitted – i.e. intermediaries are able to send this to more clients due to increased adoption of standards. However, there is less obvious improvement in the quality of information transmitted.

Minimum information requirements are not sufficient

The mandatory information set out in Annex tables in relating to both general meetings and corporate actions falls sort of market standards.

For corporate actions, only Block A of Article 8 is mandatory. However, Block B contains all key dates and Block C contains all alternatives for investors. This information should be mandatory under SRD II, in line with market standards.

Deadlines result in prioritisation of quantity/speed over quality
Deadlines for the transmission of information create pressure on intermediaries to send on information immediately upon receipt. Where information is incorrect or incomplete, this creates issues for shareholders. It also results in a 'drip feed' of information, whereby shareholders receive multiple notifications as more information becomes available – this also results in additional costs, which apply on a per-message basis.

Language issues
In cases where information is provided in a language other than English, but clients require information in English, this creates significant risk, operational burden, and timing constraint for intermediaries should they perform a translation. Market standards recommend that information is provided in English unless otherwise agreed by both parties.

Q66: Following the entry into application of the SRD2, have you experienced any changes in how frequently you receive upstream voting indications from investors at any level of the chain of intermediaries?

- [Y]
- [N]
- [Don't know]

Please explain and provide evidence to corroborate your response. [Max. 2000 characters]

No response

Q67: What type of system(s) have you put in place to communicate with shareholders in compliance with Article 2 (4) of the Implementing Regulation?

- [A fully-electronic system]
- [A mixed electronic and paper form system]
- [Other]

Please explain and provide evidence to corroborate your response. In case you put in place a fully-electronic system, please clarify if that is a proprietary system or a solution developed by a service provider. [Max. 2000 characters]

Generally, AFME and AGC members have put in place electronic systems which are available to all clients. However, some clients do not have the capability to receive electronically. Therefore, in order to service all clients, members as intermediaries typically also facilitate paper solutions. This ensures that shareholders can receive the data required as per SRDII, which is envisaged by the regulation (which states "unless otherwise agreed by the shareholder").

As previously noted, some national requirements – such as for Power of Attorney - necessitate additional manual paper-based processes.

Q68: Do you provide to your clients any electronic tools to facilitate the exercise of shareholder voting, including at cross-border level?

- [Y]
- [N]
- [Don't know]

Please explain and provide evidence to corroborate your response. In case your answer is yes, indicate whether they can modify their votes in your system ahead of the general meeting and when this is allowed. [Max. 2000 characters]

In relation to retail markets, where volumes are much lower, electronic tools are of less importance.

For wholesale clients, AFME and AGC members typically have electronic capabilities that clients can make use of. Whether this can be used at a cross-border level is largely dependent on whether the CSD or depository agent offers electronic cross-border voting. In many markets, this is not currently the case.

Q69: Have you experienced difficulties in complying with the timelines envisaged by Article 9 of the Implementing Regulation (e.g., the cut-off date)?

- [Y]
- [N]
- [Don't know]

Please explain and provide evidence to corroborate your response. In case your answer is yes, please specify what difficulties. [Max. 2000 characters]

With respect to General Meetings, the imposition of timelines has created an emphasis on quantity/timing over quality. Intermediaries now have less time for data scrubbing or enrichment due to requirements to comply with SRD II deadlines. This can lead to clients receiving incomplete information, or information in multiple tranches.

Specifically regarding the deadline for elective events (article 9.4), we note that the last intermediary is beholden to deadlines imposed by the next intermediary in the chain. It may therefore be beyond the control of the last intermediary to comply with requirements linking its deadline to the deadline imposed by the issuer.

One further source of complexity for intermediaries is the need for validation before processing shareholder identification requests – e.g. to identify in scope requests to ensure effective prioritisation.

Q70: Following the entry into application of the SRD2, in which way have you ensured that the costs you have charged for providing the services of Chapter Ia are:
a) transparent;
b) proportional;
c) non-discriminatory.
Please explain and provide evidence to corroborate your response, clarifying also what further steps could be taken to address any difficulties encountered by intermediaries in complying with the rules and to improve compliance with Article 3d. [1 box for each option, Max. 2000 characters]

No response

Q71: Do you consider that Market Standards elaborated by the industry for the application of the provisions of Chapter Ia are useful to complete the regulatory framework in this area?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response. [Max. 2000 characters]

Yes. AFME and AGC members were heavily involved in the development of market standards in the areas of shareholder identification, general meetings, golden operational record, and messaging standards.

We emphasise that greater adoption of the standards would be beneficial for improving the effectiveness of SRD II and the level of standardisation – to avoid market participants having to develop bespoke processes at a national level. We also note that market standards require continuous review and evolvement, from all types of market participants.

Two notable examples of where market standards necessarily go beyond the provisions of SRD II, but are not fully adhered to by all market participants are:

- Market standards advocate for shareholder identification requests to be routed through issuer CSD, although SRD II allows for alternative arrangements.
- Market standards for minimum information to be provided contain additional information points not mandated by SRD II.

We note that the industry Corporate Events Group are conducting work to assess non-compliance with market standards, the outcome of which will be provided to ESMA.

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