

From: AFME / EBF / ECSDA / AGC

To: European Commission –

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Dear Maija, Dear Patrick

Re: Implementing Regulation for revised Shareholder Rights' Directive – Golden Operational Record

We are writing to you in our capacity as Industry Associations that have submitted individual responses to the recent public consultation on a draft version of the text of the forthcoming Implementing Regulation (IR) for the revision of the Shareholder Rights' Directive (SRD2).

Through this joint letter, we would respectfully like to draw your attention to one specific aspect of the draft IR: the requirements for corporate action and general meeting announcements set out in Article 2 (*Standardised formats, interoperability and language*) and in Tables 3 and 8 of the Annex.

Our concern is that, for the reasons explained below, the proposed text for the SRD2 Implementing Regulation will not deliver an effective harmonisation and standardization of the announcements process for corporate actions and for general meetings. Such harmonisation and standardisation is crucial for a smooth consistent and timely transmission of information down the chain towards end investors. We are concerned that this lack of standardisation might endanger the objective of building a process whereby all end investors can fully exercise their rights.

Missing elements in the draft IR

The corporate action information process set out in the IR is based on the principle that CSDs and all intermediaries pass on down the chain of custody to the end investor a notification that contains all relevant operational information about a corporate action or a general meeting.

This process can work smoothly only if the first intermediary has itself received a notification containing all relevant operational information in a standardised, and machine-readable, format.

It is a core requirement that at the start of an event (also valid for any pre-notifications and/or updates/changes) the issuer or its agent send such a notification to the first intermediary. This pre-supposes that the issuer or its agent themselves will originate the operational information flow of the relevant elements of corporate action processing in such a standardized format.

The current text of the IR suggests that that the notification sent by the issuer, or its agent, to the first intermediary will be incomplete. Indeed, because of the wording of articles 2 (1) and 8 (1) of the IR, and of Table 3 and 8 of the Annex, we see the following risks: (i) that the issuer or its agent will not have transposed all relevant operational elements from the document published on the website, (ii) that the format chosen for the transmission to the first intermediary will be inadequate or inappropriate, and (iii) that the published information will initially be made available only in the national language of the issuer and with no certainty about when the English translation will follow.

In particular, the current text of Tables 3 and 8 of the Annex may not require, and may even prevent, the issuer or its agent from sending the full notification to the first intermediary, in the event that the operational information is also available on a website.

We believe that it is critical that the full operational information be included in the notification (the “golden operational record”) that is sent by an issuer or its agent to the first intermediary. Without this complete “golden operational record”, the notification process from the first intermediary to the end investor will be exposed to risk, increased costs, and delays (that by the way will prevent intermediaries from meeting the tight deadlines provided under Article 9 of the proposed Regulation).

Similarly, we believe that any narrative text to be provided by intermediaries to their clients, including any narrative text in a language customary in the sphere of international finance, should be included in the notification that is sent by an issuer or its agent to the first intermediary. If this is not the case, then there will be the risk of delays, increased costs and mis-translations.

Annex 1 of this letter gives some more background on the concept of the “golden operational record”, and some additional explanation as to why the “golden operational record” that is sent to the first intermediary needs to be complete.

In Annex 2 of this letter, we include suggestions as to how the text of the IR, and of the Annex of the IR, can be improved in order to ensure that the notification process functions as effectively as possible.

Concluding remarks

We strongly recommend to the Commission that the text of the IR and of its Annex be modified so that all parties in the chain of custody can be assured that for any corporate action or general meeting the first intermediary and all parties in the chain of custody down to the end investor will receive a complete “golden operational record”.

Such a change will also ensure that the Implementing Regulation is consistent with the Market Standards for Corporate Actions Processing, and the Market Standards for General Meetings, as these two sets of standards are built on the principle of a “golden operational record”.

Such a change, and the generalisation of the use of a “golden operational record”, will be necessary building blocks for future technological developments, and for the increased use of digital technologies. Accordingly, the necessary changes to the IR will also contribute to the European Commission’s Digital Agenda and Fintech Action Plan.

We stand ready to provide any additional information or background that you may wish to receive.

Yours sincerely,



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ANNEX 1: CONCEPT OF GOLDEN OPERATIONAL RECORD

Market Standards and the concept of Golden Operational Record

Market Standards are built on the concept of a “golden operational record¹” of the announcement of the event (corporate action or general meeting).

At present issuers and their agents document events in writing. Usually there is text, using legal terminology, that describes the planned event.

From a processing perspective, there is a need for this legal text to be translated into a clear and unambiguous operational text.

The “golden operational record” is the single record of operational information that allows all parties in the chain of custody to process the event in exactly the same manner and in line with the issuer’s original legal text, and to provide the correct information to the shareholder.

The Market Standards require that the initiator of a corporate action or general meeting event, namely the issuer, or an agent of the issuer, send this “golden operational record” to the first intermediary using uniform standards and formats which allow for straight through processing through the custody chain using electronic means, avoiding errors and time delays.

It is important to note that the provision of a single “golden record” by the issuer or his agent to the intermediaries is prerequisite to ensure reliable, transparent and complete information to end investor and smooth processing of corporate action. Otherwise the intermediaries will have to collate this information from different sources, translate and compare or ‘scrub’ these sources for inconsistencies or gaps, in order to be able to generate STP messages through the custody chain to the end investor. This takes time and generates cost, and adds operational risk.

This places a burden on all parties in the custody chain to determine which of the available copies they shall use and forcing reconciliation on intermediaries and investors. Such golden record will ensure that end-investors are protected from the risk that different parties in the chain will process the event in a different manner. It is also not fostering effective communication between issuers and investors and increases the risk that an end investor is not able to fully exercise its rights.

The approach taken by the two sets of Market Standards is to ensure that the necessary operational information is passed on down the custody chain, while facilitating the access of end

¹ This letter uses the term of « golden record ». Some other documents use the term “golden copy” or “golden source”. All these terms refer to the same basic concept. This letter adds the word “operational” to the term in order to stress that this letter focuses on operational information i.e. information relevant for the processing of the corporate action.

investors to additional information, notably by passing on the address of the website of the issuer, where the issuer may provide additional information.

We believe that this approach is the right approach to reflect into operational practices the intended policy objectives of the SRD2 IR.

Problems of the Incomplete Distribution of the Golden Operational Record

The current text of the Annex of the IR suggests that issuers and/or issuer agents will provide only part of the operational record to the first intermediary and will expect these parties in the custody chain to find the remainder of the operational record on the website of the issuer. Indeed, the draft text of the Implementing Regulation seems to require such a course of action, as it seems to prohibit issuers and issuer agents from providing a complete “golden operational record” to the first intermediary.

We would like to emphasize that a requirement placed the first intermediary to find the remainder of a “golden operational record” on the website of an issuer (which may have many thousands of pages) will be a considerable source of delay and operational risk (indeed information published on a website can change at any time and can even be hacked, therefore it is not a trustworthy source of information ‘on its own’. Intermediaries need to be able to rely on secure and complete information which they consider to be available through the golden record).

This is incompatible with the policy objective of the Implementing Regulation, namely to increase shareholder’s long-term engagement with company they invest in, amongst others by ensuring they have access to all relevant information on such company as soon as possible.

ANNEX 2: DRAFTING SUGGESTIONS

Proposed amendments to the Draft Implementing Regulation

Article 2 (1)

1. *The information referred to in Articles 3 and 8 of this Regulation shall be transmitted by the intermediaries in accordance with the standardised formats set out in the Annex, and shall include the minimum types of information and be in compliance with the requirements set out in the Annex.*

*The information to be provided by the issuers or third parties who initiate corporate events, to the intermediaries and to be transmitted along the chain of intermediaries to the shareholders, shall be in a form and format **described in paragraphs 2 and 3 (and in the Annex)** which allows for processing in compliance with paragraph 3.*

Article 8 (1)

1. *The information to be provided by the issuer to the first intermediary, as well as the notifications to be transmitted by the intermediaries, shall comprise all key information regarding the corporate event other than a general meeting, which is necessary for the intermediary to complete its obligations toward the shareholder or for the shareholder to exercise shareholders rights **and shall be in a format as set out in the Annex.***

Rationale

Article 2 imposes a number of requirements on intermediaries (see paragraphs 1 and 3), including notably that the announcement shall be transmitted by the intermediaries using standardised formats including the minimum types of information as set out in the Annex.

However, there is no clear definition as to what format the issuers or their agents, who are the source of the “golden operational record”, shall use when they send information to intermediaries “*The information to be provided by the issuers or third parties who initiate corporate events, to the intermediaries and to be transmitted along the chain of intermediaries to the shareholders, shall be in a format which allows for processing in compliance with paragraph 3.*”

In this regard, the risk is that the current situation is maintained, whereby the intermediaries have to interpret, compare, scrub and transpose this information which is coming from the issuers or their agents, in order to generate an ISO announcement message to their clients.

This is a missed opportunity to reduce costs and risks, especially in an environment whereby the intention of the Directive is to “*improve the communication by listed companies to their shareholders*” (recital 1) and “*The use of common formats of data and message structures in transmissions should enable efficient and reliable processing and interoperability between*

intermediaries, the issuer and its shareholders, thus ensuring the efficient functioning of Union capital markets for shares “ (recital 3).

We would therefore like to propose to clarify that the same requirements regarding announcements which are imposed on intermediaries will also apply to issuers or their agents.

This can be done by amending Article 2 and 8 as shown above.

Proposed amendments to the Annex of the Draft Implementing Regulation

The Annex mandates a number of formatting requirements on the intermediaries regarding meeting notices (table 3) and corporate events (table 8). While this is to be welcomed, the same issues as those set out above arise with respect to the application of these requirements to the transmission of information from issuers or their agents to the first intermediary.

Issuers or their agents are only required to provide some information, and may even be prevented from providing the full amount of information, given that the text specifies that *“where the issuer has made available to the shareholders on its website, the information concerning the convening of the general meeting presented in the standardised format of the table below, the Meeting Notice shall only contain blocks A and B, as well as the URL hyperlink to the website where the complete table can be found.”*

The result is that intermediaries will be required to piece together the summary information in the announcement with the information to be found in the websites of the issuers (which are all different and require manual look-ups) in order to collate the information required to send an announcement to the investors through the custody chain. This will lead again to timing and cost issues, and potential transposition risks.

We would instead propose that the meeting notice and the announcement emanating from the issuer or his agent contain all necessary information as described in Table 3 and 8.

This information can then become the golden record to be passed through the custody chain and can potentially be directly provided into a (de)centralised database using modern technology. To this end, the language might be further supplemented not to just refer to URL hyperlinks to company websites, but also any other database of information, using current or modern technology.