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Final EBF response to EC consultation on SRD Implementing Regulation

Key points:

The European Banking Federation (EBF) welcomes the opportunity to share our views on the draft Implementing Regulation (IR) issued by the European Commission (EC) on shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights.

The EBF has followed the progress of the Shareholder Rights Directive (SRD) with interest and was heavily involved in the preparatory works that led to this consultation, being an active member of the EC Expert Group on technical aspects of corporate governance processes.

The EBF appreciates the efforts of the European Commission in this field. In particular, we support the aim of the European Commission to be neutral towards new systems and processes and to support existing, well-working message structures, such as SWIFT. Relying on minimum standards and encouraging the industry to establish further self-regulatory standards will help new solutions flourish and allow the industry to continuously work on process improvements and take up best practices.

The EBF would also like to encourage the regulators to continue engaging with the industry to ensure proper application of this IR.

We believe the IR contains many positive elements. In particular:

- The chosen legal form: an implementing Regulation allows to reduce the risk of fragmentation amongst Member States.
- The emphasis on straight through processing including the communication by issuers or their agent (Art 2.1) will favour interoperability and STP through the entire chain of intermediaries.
- The significant alignment with the Market Standards for Corporate Actions Processing and the Market Standards for General Meetings.

Nevertheless, we also believe that certain aspects remain challenging and should be carefully analysed. In particular:

- The extremely **tight deadlines** for transferring all information to the shareholder and from the shareholders to the issuer and their irrelevancy in certain cases that could lead to downgrade efficient processes.
- The **lack of an appropriate definition of "shareholder" in the level one text may generate misinterpretation in a cross-border context.**

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- **Paper and electronic based exchanges.** The text shall make it clear that its scope of application covers electronic exchanges of information. In certain cases, it may be required to provide paper-based information to shareholders due to various reasons (among others: legal requirements). The conversion into electronic format that allows for straight-through processing this information is a time-consuming process. Therefore, for such cases, a clear exemption from the "same day" transmission requirement is needed for the intermediaries to be able to comply with the regulation. Forwarding the information "without undue delay" should be sufficiently clear, while allowing for the required flexibility.
- **GDPR**: IR should clarify that its provisions are consistent with GDPR (i.e. transmission of information through the chain of intermediaries, to the issuer, etc.) to avoid misinterpretation by stakeholders. Furthermore, there are questions related to what extent processes requested by SRD II on personal data of shareholders are not in scope of GDPR.
- **Information flow:** the text and annex of the IR describe inappropriately and/or unclearly the flows of information and the roles and responsibilities of the different parties in the flow of information. There are major problems (or major uncertainties) with respect to how an intermediary should respond to a request to disclose information regarding shareholder identity, and with respect to the contents of the Meeting Notice (Article 4, Table 3) and of the corporate action notification (Article 8, Table 8). In particular, the texts of the articles combined with tables appear to require the transmission of inadequate information, and to prohibit a transmission of more complete information. This will severely handicap the information transmission process.
- **Lack of consistency with the texts of the Market Standards for Corporate Actions Processing and of the Market Standards for General Meetings:** there are several cases of inconsistencies set out in more detail in the rest of this document. A full alignment with the market standards documents will solve the problems previously mentioned associated with the information transmission process.
- **Transitional rule:** The new rules set out in the text of the IR and in the Annex will require additional ISO-Standards to cover new message types and will require intermediaries to build capabilities to process these messages in an automated manner. Accordingly, it is very important that there be sufficient time between publication of the final rules and their effective date. Given the fact that the ISO standards are global standards, and that there is a fixed timetable for modifications to ISO standards, the earliest possible date for the practical implementation of the new requirements will be during the course of November 2020.

- **Clear set of rules:** The EBF is in favour of a clear set of rules and tables to be used in the communication of corporate events. Where we are aware that industry standards already exist, we have made specific references in the text. However, we would like to highlight those industry standards should not be prescribed in the IR as the future standard in order to ensure that future technical solutions can still achieve similar or even better results.

General comments to the IR

1. Definition of shareholder

The EBF believes there is a lack of a formal and consistent pan-European definition of shareholder and the usage of the term shareholder in the text of the IR and in the Annex is inconsistent. Depending on the cases, the term may refer to the legal shareholders of securities, to clients of an intermediary, or to the end investors.

The absence of a formal definition, and an inconsistent usage, may not necessarily be a problem per se – except for cross-border situations when the issuer and the recipient may have different legal interpretations on the term shareholder. However, it is essential that at every instance of usage of the term in the IR and in the Annex there is complete clarity as to what is meant in that particular context.

2. Need to acknowledge proportionality and flexibility

The IR draft establishes strict obligations for all intermediaries participating in the chain of custody of securities without mentioning any principle of proportionality in terms of:

- Size of holdings of the shareholders or investors concerned
- Timings in which notices are required

The IR should not be prescriptive except in terms of minimum information required in certain formats and, even in respect of those formats, the case for such a detailed information may not be cost-effective for all shareholders. For example, strict and costly obligations imposed on intermediaries may have the undesired consequences of (i) intermediaries shutting off access to capital markets to retail shareholders from whom those costs may not be recovered or (ii) retail shareholders not being able to afford the increased price of those services.

3. Legal and operation certainty regarding confirmation of entitled positions (Article 5)

Both SRD II and the two sets of Market Standards documents are based on the principle that there has to be the possibility for communication between issuers and end investors to take place through the chain of custody. However, under some circumstances it is also possible for communication to take place outside of the chain of custody (i.e. by by-passing the intermediaries in the chain.

As a general rule, communication outside of the chain is subject to a demanding set of pre-conditions, and in some cases (such as instructions to participate in corporate events other than general meetings) there is no real practical process. This is because direct engagement between issuer and end investor, without passing via the chain of intermediaries, would create a breach in the current corporate actions standards, would lead to high operational risks, and would hinder the good processing of the corporate event. Accordingly, SRD II and the Market Standards documents focus on requirements for communication through the chain.

The one major exception in the IR is contained in Article 5 and Table 4. This Article and Table try to merge two separate processes, namely, try to merge the process of "confirmation of entitlement" set out in the market standards (i.e. a process of

communication down the chain to the end investor), with a process of advising the issuer or its agent of the details of the end investor (so as hypothetically to facilitate direct voting instructions from the end investor).

We believe that this is a mistake, and as currently drafted the Article and Table will create confusion.

We suggest that Article 5 and Table 4 focus strictly on the process of advising the end investor of the "confirmation of entitlement".

We believe that the process where issuers can identify record date holders is the process set out in Article 3 and Tables 1 and 2, and that Article 5 should not contain any duplicate process.

Restricting Article 5 and Table 4 to the process of advising end investors of positions as of record date does not prohibit intermediaries from providing additional information to end investors and to issuers that could facility direct communication between issuers and end investors where this can be done in a safe and secure manner.

4. Joint ownerships

The Draft seems to have left out of its scope the handling of joint ownerships, whereby securities are held jointly by several natural or legal persons (e.g. within table 2, section C, the Annex to the Draft only envisages "repeating blocks" for different types of shareholding, but not multiple persons to the same account). Different jurisdictions across Members States might have envisaged diverse handling of joint ownerships, yet the IR seems not to have taken into account the difficulties in the voting processing derived from said joint ownerships.

5. Confirmation of vote recording and counting by the issuer

In accordance with article 3(C)(2) of SRD II

"Member States shall ensure that after the general meeting the shareholder or a third party nominated by the shareholder can obtain, at least upon request, confirmation that their votes have been validly recorded and counted by the company, unless that information is already available to them Member States may establish a deadline for requesting such confirmation. Such a deadline shall not be longer than three months from the date of the vote […]."

Paragraph 10 of the SRD II preamble explains the rationale for the obligation, which seems to focus on providing end-investors with all the information related to voting when engagement has not been direct (e.g. physical presence in the General Meeting) but through an intermediary or proxy.

The Draft Implementing Regulation regulates issuers' obligations in article 9.5, which reads:

"The voting receipt shall be provided to the shareholder immediately after the cast of the votes. The confirmation of recording and calculation of votes in the general meeting shall be provided by the issuer in a timely manner and no later than 15 days after the general meeting".

The wording of said paragraph should remain clear. In this sense, although deadlines are regulated in the same paragraph, it should be remembered that voting receipt confirmations are triggered only by electronically cast votes, whereas triggers for voting

recording and counting information will depend on how Member States transpose SRD II (i.e., whether national laws opt for requiring confirmations to every shareholder or only upon request). Therefore, only where there is indeed an obligation to provide a shareholder with voting recording and counting information will an issuer be required to transmit the information in Table 7 of the Annex to the Implementing Regulation.

6. Responsibility for compliance by non-EU intermediaries

EU issuers and intermediaries should be responsible for their own compliance; they cannot be held responsible for compliance by non-EU intermediaries.

Specific comments on the articles

Whereas 4:

We are in favour of using machine-readable and standardised formats that are interoperable and facilitate the possibility of shareholders to exercise their rights by usage of electronic tools to integrate their instructions. Taking this into account, we propose to define a common practice among markets under the umbrella of this IR. However, the recital 4 provision should be clarified. The notion of using widely available modalities could be interpreted in a way that does not fit with the principle of the text. The current recital 4 incentivize the use of modern technologies in communication but could, at the same time, force intermediaries to send information via postmail to their clients. Such practices, particularly in the scope of General Meetings, will increase considerably risks, delays of transmission and costs when the text should promote electronic means of exchange. We suggest then, that in cases where shareholder can receive electronic information, the following changes: "However, intermediaries should make accessible to shareholders, who are not intermediaries, information and the means to react using widely available modalities, electronic tools, which enable straight-through processing by intermediaries."

Whereas 9:

This recital needs to be modified to bring it in line with a revised version of Article 5. As mentioned elsewhere, the process of confirmation of entitlement should be in line with the Market Standards for General Meetings and should relate to the process of advising end investors of "entitled" i.e. record date holdings.

Whereas 11:

We welcome the Commission's acknowledgement of the success of the corporate actions standards. We agree that as suggested, a simple reminder of key elements and principles is the most adequate way to deal with this matter. However, taking into account this successful initiative, it would be important to replicate existing concepts exactly and not to introduce variation in wording that could lead to confusion. This is exemplified by the last participation date (article 1 -12), which is meant to be the same as the current guaranteed participation date in the standards. Furthermore, the same consideration could be made on the deadline issue (article 9) and a wording of the same kind of this used by the CAJWG standards should be replicated.

Article 1(1)

We suggest defining "Issuer" in level 2 of SRD with a reference to the definition made in Prospectus regulation and to the definition of regulated market in MiFID in order to have an EU interpretation of the text.

The Prospectus regulation defines in Article 2 "Issuer " as "(h) 'issuer' means a legal entity which issues or proposes to issue securities".

Article 1(2)

With a future perspective, we would suggest to clearly define an issuer CSD not through different texts, but in a review of the CSDR, which sounds to be the relevant place for such a definition.

Article 1(3) (definition of "corporate event")

Proposal for changes : (3) corporate event' means any action or event, initiated by the issuer or by a third party, affecting the exercise of the rights flowing from the shares; the corporate event may or may not affect the underlying share, such as the distribution of profits or a general meeting;

The definition of "corporate event" is critical in the Draft IR as anything being considered a "corporate event" calls for the notification obligations required under the Draft.

The concept of "corporate event" should therefore be more clearly established than simply referring to the exercise of rights "flowing from the shares and which may or may not affect the underlying share" is way too vague.

The reference to "third parties" is too broad to designate an initiator of corporate actions not being the issuer. The initiator of a corporate actions can be an issuer or an offeror.

The offeror can be defined as a Party (other than the Issuer) including its agent, offering a Voluntary Reorganisation (source CAJWG standards).

Article 1(12) (definition of "last participation date" or 'guaranteed participation date")

The definition of "last participation date" is flawed as it mixes up a trading concept ("buy") with a settlement concept ("transfer"). We suggest that the definition of "last participation date" be replaced by the definition of "Guaranteed Participation Date" (GPD) set out in the Corporate Actions Joint Working Group (CAJWG) standards, namely the "last date to buy the Underlying Security with the right attached to participate in an Elective Corporate Action".

Given that the existing GPD definition is now widely used within by the European Securities Industry, any changes to this definition will introduce confusion between stakeholders.

Article 1(13) (definition of "buyer protection deadline")

This definition is difficult to understand as it apparently relates to instructions that may need to be given by buyer of shares to the seller of those shares in connection with a corporate event.

This links to the prior comment in connection with "corporate events" that the Draft aims at covering as the sense of this defined term and the provisions referring to it will depend on the type of corporate action, the applicable law and the issuer concerned (and its internal regulations).

As in our comment to 1(12), we recommend the usage of the definitions used in the European market standards (CAJWG and T2S CASG). In addition to this, please note that the buyer protection process is only applicable to elective reorganisation events, not general meetings.

Article 1(14) ("issuer deadline")

The commonly used term for this is market deadline, and we recommend that a new term not be introduced for the same concept.

Article 1(15) ("ex-date")

According to the current project of IR, the notion of ex-date includes General Meeting when the current and initial scope of application of 'ex-date' is a mandatory event with no choice but a right or a proceed that can be transferred from the seller that is late in the delivery of the underlying securities and the buyer.

Furthermore, the ex-date concept is logically only part of table 8 of the annex that relates only to corporate event excluding general meetings.

Therefore, this definition will introduce matter of confusion and matter of irrelevancy as it links to the concept of a mandatory corporate actions not being a general meeting.

We would suggest simply to remove this reference by coming back to a simpler definition: "'ex-date' means the date as from which the shares are traded without the rights flowing from the shares ". This will also be in accordance with the European market standards (CAJWG and T2S CASG) where ex-date is only applicable to distribution events.

Article 1 (new– close of business)

We believe a definition of "Close of Business" is required. *Suggestion: Close of Business refers to end of normal business hours in the timezone of the party concerned, the party being an issuer, an offeror or an intermediary as the case may be.*

Article 1 (new – next business day)

A definition of "Beginning of next business day" should be added. *Suggestion: Where an information transmission is required "at the beginning of the next business day" it should take place as soon as practically possible after the start of normal business hours on the next business day in the timezone of the party concerned, the party being an issuer, an offeror or an intermediary as the case may be..*

Article 2(2)

We welcome the duty of the issuers to prepare the information to be transmitted additionally in a language customary in the sphere of international finance. Thereby retail investors will be able to understand the information. But the IR should make more clear that the obligation to translate the information to be transmitted falls exclusively on the issuers and not on the intermediaries.

Article 2(4) (access to information)

The text is unclear. Our suggestions: *(i) delete the word "only", and (ii) change "unless agreed by the shareholder" into "unless otherwise agreed by the shareholder"*

Article 3(3) (amendment of disclosure request)

This article suggests that a disclosure requests can be amended when, under a processing approach, a high recommendation is to cancel and replace such demand. We suggest then to change article 3.3 as followed: "3. The minimum requirements referred to in paragraphs 1 and 2 shall also be applicable, to the extent necessary, to any (updates and) cancellations of such requests (and potential replacement) or responses.

Article 4.2 (transmission of meeting notice): (new)

In relation to general meetings it should be possible to delimit in which cases an update or a cancellation of the notice is required: an update will be required if new items are put to the agenda or if draft resolutions are tabled pursuant to regulations implementing article 6 of Directive 2007/36/EC and a cancellation will be required if the board cancels or postpones the general meeting.

Proposed Changes:

"*2. The requirements referred to in the first paragraph shall also be applicable, to the extent necessary, to any updates of the meeting notice due to new items put to the agenda or draft resolutions tabled by shareholders pursuant to regulations implementing article 6 of Directive 2007/36/EC and cancellations of such meeting notices where the general shareholders meeting has been cancelled or postponed by the board.*"

Article 5(1) (confirmation of entitlement)

This paragraph appears to try to merge two separate processes, namely, the process of "confirmation of entitlement" set out in the market standards (i.e. a process of communication down the chain to the end investor), and a process of advising the issuer or its agent of the details of the end investor.

We believe that this is a mistake, and as currently drafted this will create confusion.

We suggest that Article 5 and Table 4 focus strictly on the process of advising the end investor of the "confirmation of entitlement".

We believe that the process whereby issuers can identify record date holders is the process set out in Article 3 and Tables 1 and 2, and that Article 5 should not contain any duplicate process.

Restricting Article 5 and Table 4 to the process of advising end investors of positions as of record date does not prohibit intermediaries from providing additional information to end investors and to issuers that could facility direct communication between issuers and end investors where this can be done in a safe and secure manner.

Article 6 (notice of participation)

There is no formal definition of a notice of participation. This may not be needed as it is clear from Table 5 that a notice of participation can include the details of the votes of the end investor.

Article 8 (transmission of information specific to corporate events other than general meetings)

An important principle is that all end investors that hold shares in a company should be able to participate in all corporate events for those shares.

However, it may be the case that specific local restrictions, especially in the country of the end investor, whether in the European Union, or outside of the European Union, may prevent intermediaries from complying with the requirements of this Article, or may render the requirements of this Article redundant, if, for example, the end investor is not allowed to participate in the corporate event. Article 8 should be revised to take account of these scenarios.

In addition, buyer protection instructions are not "settled" before the close of the election period, as buyer protection instructions are processed as transformations that settle after the election period.

Article 9 (transmission of information specific to other corporate events)

We have a **strong concern relating to the deadlines imposed in Article 9.** This article is based on non-written and theoretical assumptions such as:

- the issuer provides a notice that does not require any manual intervention, communications between issuer/issuer's agent, multiple intermediaries and the final investor follow a full electronic STP process without manual intervention.
- the capacity of final investor to read an ISO formatted or Swift message.

If not, intermediaries will at least have to transform information into a medium which their client can understand and answer to.

Due to legal requirements and various other reasons it may be required to provide the information to the shareholder in paper. The time needed to send and return documents by post means that additional time buffers have to be built in when planning a general meeting. But although the conversion into electronic format that allows for straight-through processing this information is a time-consuming process**. Therefore, for such cases a clear exemption from the same-day-transmission requirement is needed for the intermediaries to be able to comply with the regulation.** Forwarding the information "without undue delay" should be sufficiently clear, while allowing for the required flexibility.

Furthermore, there is no clear definition of what is "close of business" and variations may exist across Member States. Complying with this provision may therefore only be possible if a definition is inserted in Article 1.

The same day principle appears to increase operational risk on an unnecessary basis which may in turn increase breach in exercising of rights of and cost to the final client.

On the contrary the current process experienced on Corporate Actions processing is deemed to be efficient and refers to "without undue delay" as stated in the Market Standards for General Meetings and the Market Standards for Corporate Actions Processing." The IR should be aligned to the Market Standards

There is a need to modify the second subparagraph of Article 9(2). The current text refers to "entitled positions" but before the record date there are no entitled positions.

There is also a need to modify the third subparagraph as a requirement to re-send all the corporate event information in the event that a position changes is redundant. Once an intermediary or end investor has the received the information, it does not need to receive the same information multiple times following every change in position before record date.

Accordingly, we suggest that the second and third subparagraphs read as follows:

The first intermediary and any other intermediary receiving the information regarding a corporate event shall transmit such information to the next intermediary in the chain who holds positions of shares affected by the corporate event or has a pending right to hold such positions without undue delay on the same business day as it receives the information. Where the intermediary receives the information after the close of business, it shall transmit the information at the beginning of the next business day.

Where after the first transmission a client of an intermediary receives a position of shares affected by a corporate event and that client has not previously received information on that event, the intermediary shall additionally transmit the information immediately following the change to the new shareholders in its books, until the issuer deadline or record date.

In addition, we also question the addition of 'or record date' to 9(4). The section describes an elective corporate event, and the text should only refer to market (issuer) deadline.

Furthermore, the article 9(4) pushes in favor of transmitting immediately instructions when currently there are operational processes that globalize instructions and sends them before the issuer deadline.

This is clearly the case on Corporate Actions requesting an answer from the shareholders, a domain deemed to be efficient and recognized as such by the text.

In the case of voting instructions, current processes may follow the Corporate Actions processes for the same reason or may be the reflect of current obligations not permitting cancellation or change of votes when being sent to the issuer or its agent. This leads consequently to maintain them at intermediary level and to send them at the latest moment to permit investor to change their views if required and to permit them to properly exercise their rights.

Accordingly, we propose that the first subparagraph of Article 9(4) read as follows:

Each intermediary shall transmit to the issuer any information regarding shareholder action following a process allowing for compliance with the issuer deadline or record date.

We also suggest that in the third subparagraph of Article 9(4) the words "entitled position" be replaced by "holdings" given that before the record date there are no entitled positions.

Finally, in 9(6), third subparagraph, it is stated that the intermediary shall transmit the response 'in any event by the issuer deadline'. How is this to be accomplished by the intermediary if the request is only sent to it after market/issuer deadline? We suggest that these words be deleted, so that the obligation in such a case would be to respond without undue delay.

The EBF believes it would be crucial to respect the issuer deadline.

Potential wording suggestion could find inspiration from Article 2 (2) DRAFT RTS on Settlement Discipline:

"2. The allocation and written confirmation referred to in paragraph 1 shall reach the investment firm:

(a) on the business day within the time zone of the investment firm on which the transaction has taken place; or,

(b) the business day following the business day on which the transaction has taken place:

(i) where there is a difference of more than two hours between the time zone of the investment firm and the time zone of the relevant professional client; or

(ii) where the orders have been executed after 16.00 CET of the business day in the time zone of the investment firm.

The investment firm shall confirm to the professional client receipt of the allocation and of the written confirmation within two hours of that receipt. Where the allocation and the written confirmation reaches the investment firm later than one hour before the investment firm's close of business, the investment firm shall confirm receipt of the allocation and of the written confirmation within one hour after the start of business on the next business day."

The issuer shall give reasonable time between sending information and the deadlines so that the chain of custodians have sufficient time to pass information down/up the chain.

Translated in a corporate events and transmission of information the following draft could be suggested:

"The information received by an intermediary shall be transmitted to upper layer or layer down of parties without undue delay.

It shall reach the client of the intermediary or the upper layer:

- on the business day within the time zone of the intermediary on which the the intermediary has received the information or
- at the latest by 12.00 (time zone of the intermediary) of the following business day of reception of the information:
  - where there is a difference of more than Two hours between the time zone of the intermediary receiving the information and the sender of this information
  - where the information has been sent to the intermediary after 16.00 (time zone of the intermediary)

In first paragraph Parties means here an issuer, intermediary or investor as the case may be"

The advantage of such wording is to impose a strict framework of deadlines and to make consistent IR with:

- other piece of European Regulations (CSDR),
- CAJWG standards that introduce the notion of undue delay but with possible next day transmission if practical difficulties occur
- Suggested definitions of "close of business" and "beginning of next day" that could be introduced in the above suggested wording.

These delays are only applicable in case the information received by intermediaries is in a way that allows a Straight Through Processing

New Article suggestion (opt-out):

An article should allow specific contractual agreement set up by intermediaries for clients that do not want to receive certain information and express the wish for an opt-out of information transmission.

New Article suggestion (limited responsibility):

Further clarification would be highly appreciated that any intermediary is obliged to only provide the information available, as some of the information requested in the regulation and its annex is not obtained as a standard (e.g. e-mail address). Furthermore, it is important to clarify that an intermediary cannot be accountable for any information

missing/delay caused by other intermediaries in the chain that do not fulfil their obligations under the revised Shareholder Rights Directive and its supplementing acts.

GENERAL COMMENTS ON THE ANNEX

1. We believe issues could arise where national laws regulate in greater detail some of the information that is envisaged in the annexed tables. For instance, participation by proxy in some Member States requires more information, information which has to comply with certain "formulas" and meet certain formalities, which would be additional to those envisaged in the Annex (for example, table 5, sections B.4 and B.5). This poses the question of how an issuer should proceed if the information it receives by way of the Notice of Participation includes the minimum information foreseen in the draft Implementing Regulation but does not meet the additional requirements for it to be validly taken into account for the exercise of shareholder rights pursuant to applicable regulations.

If all these issues are left at the hands of Member States, it will be at the expense of achieving harmonized flows of information among market operators and potentially hinder achieving the SRD II objectives.

2. The last two columns ("Format" and "Originator of data") will be included in the Regulation for information purposes but they will not be included in the actual communications sent by issuers and intermediaries. This should be made explicit in the Draft.

3. The maximum number of characters in certain fields of the tables may not be enough to fill in the required information. Some of those cases are further described in this document, but please consider a general review of those limits.

4. The formats are often not in compliance with ISO standards. We question the inclusion of specific formats in the annex at a general level – but if specific, detailed formats are included, they should be in the standard used by the global financial community, hence ISO (primarily ISO 20022). We strongly recommend the annex to only describe the content, with the minimum level of information, which should be included. For example, the market/issuer deadline in Table 1, A5, could then be specified as 'Date/time; must include the date provided with YYYYMMDD'. This would set the minimum – a date with century, year, month and day must be included – but not exclude the possibility to add a time. Another example would be the threshold quantity in Table 1, A6, where the ISO standards simply do not support the proposed format. If the annex includes formats which are in contradiction of ISO standards, the financial sector cannot both comply with the RTS and at the same time comply with the requirement to use standardised, electronic formats.

5. A general statement should be added, clarifying that the examples in the "Description" column are included for illustrative purposes only and cannot be exhaustive.

6. It must be ensured that any format chosen allows for the use of national, specific characters (e.g. ß, ä, ö, ü). This is in particular important for names, street addresses and cities.

7. Standardized information would be required for the following fields and in many cases, it already exists in the ISO standards. Hence, we would encourage the EC to review the existing ISO messages for the general meetings process.

- Table 1 – A1 –Unique identifier of the request (which should be an analogy of the Official Corporate Action Event Reference, COAF): Reference in 16 alpha-numerical characters [restricted to 16 characters in order for possible inclusion in an ISO 15022 message]
- Table 1 - A2 - Type of Request (an analogy of the Corporate Action Event Indicator, CAEV, code)
- Table 1 – A3 – ISIN: Please note that ISIN is an ISO standard; ISO 6166
- Table 1 – A5 – Issuer/market deadline: Please see earlier comment, allowing for the issuer to provide a time, in addition to the date
- Table 1 – A6 – Threshold quantity…: Please see earlier comment; the format is not in compliance with ISO standards
- Table 1 – A7 – Date from which…: Please note that the common form in ISO would be Y/N. Please also note that the description states that 'The issuer shall indicate in its request how the initial date of shareholding is to be determined.' but table 1 does not include any such possibility.
- Table 1 – B1 – Unique identifier of the recipient…: Why not use LEI in all cases?
- Table 1 – B2 – Name of the recipient…: 35 alpha-numerical characters may not be sufficient, and the ISO standards provide for more characters.
- Table 1 – B1 – Address of the recipient…: Should the address thus be used to also inform of the communication method for the response? And what if an issuer wishes to provide multiple response options/addresses?
- Table 2 – A1 –Unique identifier of the request (which should be an analogy of the Official Corporate Action Event Reference, COAF): Reference in 16 alpha-numerical characters [restricted to 16 characters in order for possible inclusion in an ISO 15022 message]
- Table 2 – A2 –Unique identifier of the response (which should be the Sender's Message Reference): Reference in 16 alpha-numerical characters [restricted to 16 characters in order for possible inclusion in an ISO 15022 message]
- Table 2 - A3 - Type of Request (an analogy of the Corporate Action Event Indicator, CAEV, code)
- Table 2 – A4 – ISIN: Please note that ISIN is an ISO standard; ISO 6166
- Table 2 – B1 – Unique identifier of the responding…: Why not use LEI in all cases?
- Table 2 – B2 – Name of the responding …: 35 alpha-numerical characters may not be sufficient, and the ISO standards provide for more characters.
- Table 2 – B3/B4/B5 – …number of shares…: Please note that the ISO 15022 standards have the format '15d' for quantity and amount fields. This means a maximum of 14 digits, a minimum of one integer, and a comma as decimal separator.
- Table 2 – C1(a) – Unique identifier…: Why not use LEI if this is available?
- Table 2 – C2(a) and (b): Name…: 35 alpha-numerical characters may not be sufficient, and the ISO standards provide for more characters.

- Table 2 – C11 – Number of shares…: Please note that the ISO 15022 standards have the format '15d' for quantity and amount fields. This means a maximum of 14 digits, a minimum of one integer, and a comma as decimal separator.
- Table 3 – A1 –Unique identifier of the event (which should be an analogy of the Official Corporate Action Event Reference, COAF): Reference in 16 alpha-numerical characters [restricted to 16 characters in order for possible inclusion in an ISO 15022 message]
- Table 3 - A2 - Type of Message: Use existing ISO codes. Please note that in the ISO 20022 general meeting messages, the cancellation of a general meeting is a separate message, not a type within the meeting notification message.
- Table 3 – B1 – ISIN: Please note that ISIN is an ISO standard; ISO 6166. Please also note that according to global market practice, it is recommended to have one meeting notice and unique identifier per ISIN. Table 3 – C1 – Date of the General Meeting: Please note that this information is mandatory in the ISO 20022 Meeting Notification message – hence it must be included if the message is to be sent, even if the URL hyperlink is provided.
- Table 3 – C2 – Time of the General Meeting: Please note that this information is mandatory in the ISO 20022 MeetingNotification message – hence it must be included if the message is to be sent, even if the URL hyperlink is provided.
- Table 3 - C3 - Type of General Meeting: Use existing ISO codes. Please note that this information is mandatory in the ISO 20022 MeetingNotification message – hence it must be included if the message is to be sent, even if the URL hyperlink is provided.
- Table 3 – C4 – Location of the General Meeting: Please note that this information is mandatory in the ISO 20022 MeetingNotification message – hence it must be included if the message is to be sent, even if the URL hyperlink is provided.
- Table 3 – C5 – Record date: Please note that the entitlement message block mandatory in the ISO 20022 MeetingNotification message – hence it must be included if the message is to be sent, even if the URL hyperlink is provided. The content is optional, but record date could be provided in the EntitlementFixingDate field.
- Table 3 – C6 – URL: In the ISO 20022 general meeting messages, the field is AdditionalDocumentation RLAddress, and is limited to 256 characters.
- Table 3 – D1 – List of method of participation…: Please note that this is not compliant with the ISO 20022 general meeting messages. There are separate fields to describe whether physical attendance is required (AttendanceRequired) or whether a proxy can be used (ProxyChoice), with additional details.
- Table 3 – D2 and D3: There are multiple fields in the ISO 20022 general meeting messages to provide this information; please note that deadlines ae generally in Date/Time format.
- Table 3 – E1 – Unique identifier of the agenda item: In the ISO 20022 general meeting notification this is the IssuerLabel, and it is a maximum of 35 characters.
- Table 3 – E2 – Title of the agenda item: In the ISO 20022 general meeting notification this is the Title, and it is a maximum of 350 characters.
- Table 3 - E3 - reference to materials (4 characters potentially not sufficient): The agenda item has a unique identifier, as specified in E1. What is the content and purpose of this field?

- Table 3 – E4 – Alternative voting options…: In the ISO 20022 general meeting notification this is the VoteInstructionType, and it is a repetitive field of up to 8 4-letter codes. Please note that a separate field is used to identify if the agenda item is subject to vote.
- Table 4 – A1 –Unique identifier of the confirmation (which should be the Sender's Message Reference): Reference in 16 alpha-numerical characters [restricted to 16 characters in order for possible inclusion in an ISO 15022 message]
- Table 4 - A2 - Unique identifier of the event (which should be an analogy of the Official Corporate Action Event Reference, COAF): Reference in 16 alpha-numerical characters [restricted to 16 characters in order for possible inclusion in an ISO 15022 message]Table 4 - A3 - Type of Message:Please note that in the ISO 20022 general meeting messages, this is a separate message type
- Table 4 – A4 – ISIN: Please note that ISIN is an ISO standard; ISO 6166.
- Table 4 – B2 – Entitled position: Please note that the ISO 15022 standards have the format '15d' for quantity and amount fields. This means a maximum of 14 digits, a minimum of one integer, and a comma as decimal separator.
- Table 4 – C1 – Number of the securities account: Is this message to be sent to the account holder or via the chain of intermediaries towards the issuer? If the latter, why would the securities account be included?
- Table 4 – C2 – Name of account holder: If this message is to be sent to the account holder, why should the name be included?
- Table 5 - A2 - Type of Message
- Table 5 - A3 - Unique identifier of the event (4 characters potentially not sufficient)
- Table 6 - Type of Message
- Table 7 - Type of Message
- Table 8 - A2 - Type of Corporate Event (42 characters potentially not sufficient)?

SPECIFIC COMMENTS TO THE ANNEX

Table 1:

a) Threshold Quantity limiting the request

We underline that the – by far - optimal manner of expressing a threshold is in terms of "an absolute number of shares". The table rightfully states that the use of a percentage is detrimental to the process. The latter would imply that addressees of the request have to determine what the number of outstanding shares is or will be per record date. Not only is this a time-consuming element in the process, it may – based on different information – result in errors and/or different outcomes per addressee. Since it is foreseen for the intermediary to only report back the number of shares held, we believe that this has already been the intention of the Commission.

Additionally, it should remain clear that the minimum threshold is only applicable at the latest stage of the chain of intermediaries ("last intermediary"), not before, i.e. intermediaries should report all securities accounts that they hold to the same person, and not block any information due to minimum thresholds.

b) Initial Date of Shareholding

We underline that the issuer – by choosing to ask for these additional data – would affect and possibly undermine the straight-through processing of the request. In case the option is to be maintained, we suggest to introduce one definition for the "initial date of shareholding". If the issuer is able to define this on a case-by-case basis, this will complicate automation and might create significant delay in responses.

Taking into account the concept of "initial" shareholdings, we suggest referring to the date of the first receipt made by the shareholders on holdings that were never reduced to a zero position.

A limit of time in the past should be envisaged according to the strict needs of issuers as currently historicity can be managed through windows of time and can be lost due to transfer of portfolio between intermediaries.

Intermediaries shall only be requested to send information available in their data bases. If really needed, an issuer could always have the possibility to check the date of initial shareholdings by contacting directly the shareholders that he has identified through this procedure.

Additional charges should be applicable by intermediaries to issuers that would express a need for another method of determination of the "initial shareholdings".

c) Furthermore Field C.9. cannot be a mandatory filed, because the e-Mail address is not an obligation to report pursuant to recital (5) of SRD. **Identifier for shareholder being a natural person**

MIFID Transaction Reporting Identifier is suggested to be used as identifier for natural persons. In case it would not be feasible for shareholders in non-EU countries that are being handled by third country intermediaries, in this case a "local identifier" shall be accepted.

d) Address of the recipient of the response

When the issuer/requestor asks to send the response to an e-mail address (secured or certified), a responding entity will need strong assurance that such mail address is safe indeed. The responding entity is responsible for sending investor information to authorised recipients only. While the SRD II construes such authorisation in principle, the use of an address belonging to the rightful requestor is key. Intermediary in that sense should not be considered as liable for any consequence of sending response to the address that has been mentioned by the issuer.

We think a market practice needs to be developed to ensure satisfactory securing or certifying such mail address

e) Format column should be left blank

We believe the format currently provided is the one of MT564 SWIFT messages, which cannot be used for disclosure purposes as they don't contain all required elements. We believe a new message type should be created to specifically deal with all disclosure to comply more in general reporting flow to the issuer requirements.

Table 2:

We suggest that the IR and the Table are clear when an intermediary receives a request to disclose information regarding shareholder identity. The intermediary in its response should provide the information in its possession about its clients (e.g. the name and address of its clients, their holdings, and the nature of their holdings and whether they are acting as intermediaries or end investors).

a) Name of shareholder in case of a natural person

The table requires full first name(s). In several Member States banks do not record full first names, but rather initials of natural persons (e.g. "J.M."). When such persons are uniquely identified by a national identifier (as assumed in C1b) registering full first names for the sole purpose of shareholders identification is unnecessary, in addition to being costly. We therefore suggest that reporting the full initials is deemed sufficient.

It is not clear when "more than one surname" is in place. In the certain Member States, a substantial number of natural persons' surnames is composed of two surnames, sometimes even separated by a hyphen (e.g. "Jansen – de Boer"); other individuals use a surname consisting of two parts separated by a space ("Castilho dos Santos"). We think that the specs should clarify that these instances reflect one surname and do not require a separating comma.

We encourage the Commission to clarify the use of first names and surnames.

b) As indicated above (par 1 under A7), asking a specification in different parts of a shareholding according to an initial holding date is conceptually problematic. **Format column should be left blank**

We believe the format currently provided is the one of MT565 SWIFT messages, which cannot be used for disclosure purposes as they don't contain all required elements. We believe a new message type should be created to specifically deal with all disclosure requirements.

c) Point 11 of part C should say "Number of shares held by the shareholder with that intermediary"

Table 3:

a) Introductory paragraph

We suggest deleting the introductory paragraph, as this text appears to prohibit a complete meeting notice in the event an issuer has put information up on its website. This would defeat the purpose of SRD2. It is critical that the meeting notices include all core information as set out in the Market Standards for General Meetings.

We understand that the reference in Article 3b (2) of Directive 2007/36/EC to standardised information relates to the communications to be sent to intermediaries and does not imply that the information available on the issuer's website regarding general meetings must be available in the same format. Please note local company law may state how the notice of meeting shall be drafted and what information shall be

made available on issuers' websites. The current drafting of Table 3 would lead to issuers posting two different notice of meetings on their websites: one on the company law format and another one following table 3 of the implementing regulation.

b) Section C, row 1

The Draft should allow for this cell to be split in three in order to specify: (1) the date of meeting on first call; (2) the date of meeting on second call; and, on a voluntary basis, (3) the most probable actual date of the meeting.

Proposed Changes:

1. Date of the General Meeting			
a. Date on first call		[Date (YYYYMMDD)]	Issuer
b. Date on second call	Optional field	[Date (YYYYMMDD)]	Issuer
c. Probable actual date of meeting	Optional field	[Date (YYYYMMDD)]	Issuer

c) Section C, row 2

The Draft should allow for this cell to be split in two: (1) the time at which the general meeting will start; (2) the time at which shareholders attending the meeting shall be registered.

Proposed Changes:

2. Time of the General Meeting	Specification of the time of the commencement of the General Meeting, including applicable time zone	[Local Time and UTC (Coordinated Universal Time)]	Issuer
2a. Time for registration	Specification of the deadline to register as a shareholder attending the meeting. If different deadlines apply depending on the method of attendance (physical or virtual), please describe them separately.	[Local Time and UTC (Coordinated Universal Time)]	Issuer

d) Section C, row 3

The Draft should clarify what his is referring, If it is covering the distinction between ordinary and extraordinary meetings codes should be assigned to these types of meeting or the limit of characters shown in the Format cell should be extended.

Proposed Changes:

3. Type of General Meeting	Specification of the type of the General Meeting convened: Ordinary = O Extraordinary = E	[1 alphanumeric character]	Issuer

e) Section D, rows 2 and 3

These rows should allow to introduce different dates (election period, potentially record date, etc.) not only for each method of participation but also for each way of receiving a notice of participation (since we assume that issuers will still be entitled to send physical proxy cards and receive notice of participation through other channels, as allowed in article 5.3(b) of Directive 2007/36/EC). In addition, some wording may be needed in those rows in other to clarify if the deadline applies to the delivery of the notice or to its reception by the issuer (please note that many companies define their deadlines for voting by correspondence or participation through proxy by reference to the date on which the issuer receives the relevant proxy card or voting card).

Proposed Changes:

2.Issuer deadline for the notification of participation	Last day for the shareholder to notify the issuer per each method of participation. In case of multiple deadlines for each method (VI, PH, PX), the deadline shall be specified for each method of participation. In addition, in case of multiple deadlines for each means of sending a notice of participation (through intermediaries, as provided in this Regulation; by electronic means; by correspondence or otherwise), the deadline shall be specified for each method. Finally, it shall be described if the deadline refers to the date on which the notice is sent to the issuer or to the date on which the issuer receives it.	[Local Time and UTC (Coordinated Universal Time)] + [Date (YYYYMMDD)] + [ ] alphanumeric characters	Issuer

3.Issuer deadline for voting	Last day to submit the votes by the shareholder to the issuer per each means of voting (through intermediaries, as provided in this Regulation; by electronic means; by correspondence or otherwise), to the extent applicable. It shall be described if the deadline refers to the date on which the notice is sent to the issuer or to the date in which the issuer receives it.	[Local Time and UTC (Coordinated Universal Time)] + [Date (YYYYMMDD)] + [ ] alphanumeric characters	Issuer

f) Section E, row 3

We understand that if section E is a repeating block (one per each agenda item) it will not be necessary to clarify in row 3 the item of the agenda to which certain materials refer. In addition, if this row 3 shall contain the URL to the relevant documents, the limit of 4 alphanumeric characters is not enough.

Proposed Changes:

3.Reference to materials pertaining to the agenda item	Title of document or short description of the type of the additional materials (proposal, directors' report, independent expert report, annual accounts. etc.), including the URL where they are available	[[ ] alphanumeric characters]	Issuer

g) Section E, row 4

Consider including defined terms for voting in favour, against, abstention and blank vote (in a similar way that section D, row 1, defines the methods of participation).

In addition, the current instructions of this row state that the field is to be left unpopulated if an item of the agenda is not subject to a vote. However, there is no specific provision to distinguish items subject to a binding vote from those subject to an advisory vote.

Proposed Changes:

4. Alternative voting options for the shareholder under each resolution	Firstly, state whether the item of the agenda is subject to a "binding vote" or to a "consultative vote". If the agenda item is not subject to vote, the field is to be left unpopulated. Specification of all alternative voting options available for the shareholder: voting in favor = VF, against = VA, abstention = A and blank vote = B	[If populated: 100 alphanumeric characters]	Issuer

h) Section F

Some wording may be needed in other to clarify if the deadline applies to the delivery of the notice or to its reception by the issuer (see also comment to Section D, rows 2 and 3, of this Table 3). In addition, a new row may be required in order to describe the conditions and procedures required to exercise each shareholders right (e.g., minimum participation requirement to be able to exercise rights, type of document to be delivered in order to consider valid the exercise of shareholders rights). Even though row 6 in section E would include the URL hyperlink to the website where full information required to be provided to shareholders prior to the General Meeting would be available, a short description of the basic requirements to exercise shareholders rights may be useful.

Proposed Changes:

1. Object of deadline	Specification of the shareholders right for which the deadline applies (such as tabling draft resolutions, putting items on the agenda or right of information)	[100 alphanumeric characters]	Issuer
2. Applicable issuer deadline	Specification of the deadline related to the exercise of the shareholders right specified in the field above, stating the circumstance to which the deadline applies (e.g., delivery of the relevant notice or reception thereof by the issuer).	[Local Time and UTC (Coordinated Universal Time) (if applicable)] + [Date (YYYYMMDD)]	Issuer

3. Applicable conditions to the exercise of shareholders rights	Brief description of the most relevant conditions, including the minimum shareholding that entitles to the exercise of such right and the requirements of the notice to be sent. A cross-reference to row 6 in section E may be included at the end of this field.	[ ] alphanumeric characters	Issuer

i)New Section G: we suggest including a new section to allow issuers to include additional information on the general meeting which is required by local regulations to call such meeting but does not refer to issues covered in other sections of the standard notice of meeting.

This new section may also be useful in the event of an update of the notice of meeting in order to specify how the issuer would treat the notices of participation received until such update of the notice of meeting if no updated notice of participation is received by the relevant deadline

Proposed Changes:

G. Other information			
1. Other relevant information		[ ] alphanumeric characters	Issuer
2. Validity of notice of participation received before the updated notice of meeting (in the absence of an updated notice of participation)	If applicable, description of the votes that will be deemed valid and the default instructions regarding new items of the agenda or alternative draft proposals.	[ ] alphanumeric characters	Issuer

Table 5:

a) The Table should specify how it should be amended after shareholders have exercised their rights to put new items to the agenda and, particularly, when they have tabled draft resolutions pursuant to regulations implementing article 6 of Directive 2007/36/EC.

b) Section B, row regarding proxies: usually proxy cards provide that if shareholders do not appoint a specific proxy, it is assumed that the proxy will be the chairman or another director of the issuer. Consequently, we suggest enabling to include a similar provision in this table. In relation to that, it would also be necessary to enable the inclusion of information regarding potential conflicts of interest of the proxy holder in line with the alternatives conferred to Member States in article 10 of Directive 2007/36/EC.

c) Additional row in Section B: an additional row is needed to specify if the proxy allows to vote resolutions not included in the agenda and proposed by shareholders at the general shareholders meeting and, in that case, what are the instructions given to the proxy for such votes.

Proposed Changes:

4. Name of proxy, or other third party nominated by shareholder	If applicable	[Format of fields B.3a) or B.3b) above, to the extent applicable]	Last intermediary or shareholder
5.Unique identifier of proxy or other third party nominated by shareholder	If applicable	Format of fields B.3a) or B.3b) above, to the extent applicable	Last intermediary or shareholder
8. Specific instructions regarding conflicts of interest		[ ] alphanumeric characters	Last intermediary or shareholder
10. Scope of the proxy	Specification of authorisation to the proxy holder to vote on items not included in the agenda and proposed by shareholders at the general shareholders meeting and, if applicable, specific instructions.	[ ] alphanumeric characters	Last intermediary or shareholder
9. Default action in relation to items not included in the agenda (in the absence of specific instructions)	Specification of the votes that the proxy holder will cast on items not included in the agenda in the absence of specific instructions indicating to act otherwise.	[ ] alphanumeric characters	Issuer

Table 8:

The introductory paragraph to Table 8 should be deleted, as it appears to prohibit a full notification of a corporate event in line with the Market Standards for Corporate Action Processing.

a) Point 1 of part B should say "Guaranteed Participation date" instead of "Last Participation date" and it should state "issuer" in the originator of the data
b) Point 2 of part B should state "issuer" in the originator of the data