

Shareholder Rights Directive II

Introduction

The long-awaited regulatory reform of the Shareholder Rights Directive (SRD II) is the latest initiative looking to enhance corporate governance in companies whose securities are traded in the EU through the encouragement of long-term investment by shareholders and the improvement of transparency between issuers and their investors.

The directive required basic transposition into each Member State's national law by 10th June 2019 and full implementation of post-trade operations by 3rd September 2020.

Many of the SRD II obligations will also apply to third country firms which are involved in the management, safekeeping or administration of EU shares as well as third country proxy advisory firms.

What will SRD II mean for issuers?

SRD II's main aim is to stimulate shareholders' long-term engagement, increase the transparency of the voting process at general meetings, introduce legally binding shareholder identification and enhance information flow between issuers, intermediaries and investors.

Identification of shareholders

The implementation of SRD II will ensure that issuers have the right to identify their shareholders, holding more than a certain percentage of shares or voting rights.

By default, the highest threshold has been set at 0.5% of an issuer's share capital or voting rights. However, Member States may set their own lower thresholds as communicated to the European Securities and Market Authority.

Better Corporate Governance

Investors and shareholders will have greater powers at General Meetings (GM) including voting on remuneration with this vote needing to take place at least every four years.

SRD II facilitates issuers access to an institutional investors shareholder engagement policy (which should be published on their website). In addition, issuers will benefit from greater visibility into proxy advisors research and how they establish their voting recommendations.

Visibility of related party transactions

Certain dealings, including intragroup transactions – between an issuer and its affiliates or between two affiliates of the same holding company – are to be approved at the General Meeting.



What will SRD II mean for custodians and intermediaries?

SRDII imposes several obligations on custodians and intermediaries. Under the new regulation, any transmission between intermediaries in the custodial chain will have new obligations regarding the retention and transmission of information e.g. the delivery of GM notice of meeting to underlying investors.

Electronic communication is key and speed of response is encouraged, with intermediaries having to transmit to the issuer updated notices of shareholder participation to general meetings no later than the close of the same business day.

How will the identification rules be applied?

The SRD II shareholding threshold (current guidance 0.5%) will enable an issuer to request identification, with the onus on the disclosing shareholder required to provide name, contact details and the number of shares held. These requests can be made by the issuer themselves or by a third party acting on behalf of the company. Again, the speed of response is a key obligation, with SRD II stating that:

“On the request of the company or of a third party nominated by the company, the intermediaries communicate without delay to the company the information regarding shareholder identity.”

Overall SRD II is likely to positively impact all those markets and regions where ultimate beneficial owner shareholding disclosure has traditionally been harder to obtain; such as Germany (for bearer shares), the Benelux, Denmark, Sweden, Spain and Italy. Issuers will have formal legal recourse to request both accurate and up-to-date beneficial owner information that was hitherto not fully obtainable.

Long Term Objectives

It is anticipated that increased transparency at all levels (identification, voting decisions, and investment policy) should lead to an improved level of dialogue between issuers, intermediaries and shareholders. Combined with other initiatives targeting long-term engagement (such as the European Long-Term Investment Fund Regulation) and diversification of funding sources for issuers (Capital Markets Union), SRD II should lead to longer-term engagement and investment across listed companies.

Our View

As a long-term proponent of best practice within the shareholder identification industry, Orient Capital sees the incorporation of SRD II positively. In those European markets where transparency has been a challenge, it will be interesting to see how investors and intermediaries react to the directive.

As a global shareholder identification provider, Orient Capital has been able to work with disclosure requirements to provide a robust mechanism for identification which supports both investors and custodians and that is used by thousands of custodians each year to facilitate open transparency for issuers. We anticipate that beyond those already geared up to deal with disclosure, many additional investors and custodians will embrace the requirements around SRD II, markedly improving the overall transparency levels across European issuers.

Through SRD II, the compliance around disclosure could become a mirror to the best practice already utilised in well-known disclosure-based jurisdictions including the UK, Ireland, South Africa, Hong Kong and Australia, where issuers benefit from faster turnaround and enhanced visibility.

As the largest global analysed of shareholder data, with over 1,000 shareholder identification analyses compiled monthly, over 12,000 custodial intermediary contacts and 250,000 shareholding disclosure requests issued per annum, Orient Capital continue to be the best placed team to react to issuers need for more transparency.

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