

Shareholder Rights Directive – Final Rules

The FCA has published Policy Statement PS19/13 (“Proposals to promote shareholder engagement: Feedback to CP19/7 and final rules”) which sets out its final rules arising from the implementation of amendments to the **Shareholder Rights Directive** (2017/828 – “SRD II”). Please see the Alert (see ‘Useful Links’) we issued in February based upon the above mentioned CP19/7 for further details.

The purpose of SRD II is to encourage effective stewardship and long-term decision making, involving transparency of engagement policies and investment strategies across the institutional investment community.

The need to consider an ‘**engagement policy**’ will apply to:

- a UK MiFID investment firm that provides portfolio management services to investors
- a third country investment firm that provides portfolio management services to investors
- a UK UCITS management company
- an ICVC that is a UCITS scheme without a separate management company
- a full-scope UK AIFM

Although the above list does not include ‘**small AIFMs**’, such an entity would be a UK MiFID firm if it was providing portfolio management services to third-parties.

Whilst SRD II applies its provisions to shares traded on a ‘**regulated market**’ – so that firms that only trade in unlisted shares will be out of the scope of SRD II – the FCA has **extended the definition** of the latter to capture certain markets situated outside of the EEA which are ‘comparable’ (see the amended Glossary definition in Appendix 1 of PS19/13).

The **engagement policy** will need to address the matters set out in COBS 2.2B which include, but are not limited to, descriptions of how the firm exercises voting rights and how it integrates shareholder engagement in its investment strategy. In addition, **annual disclosure** on how the firm has implemented its engagement policy, including how the firm has **exercised its voting rights** (unless ‘insignificant’ – recital 18 of SRD II provides some examples but leaves it to investors to set their own criteria).

Both the engagement policy and the above annual disclosure must be made available free of charge on the firm’s **website**.

SRD II generally applies a ‘**comply-or-explain**’ basis so some firms may feel it more appropriate to explain (“a clear and reasoned explanation”) why they have chosen not to comply.

Separate **additional annual disclosure** falls upon those firms that invest on behalf of an ‘**SRD institutional investor**’ (in brief, occupational pension providers and life insurers but please see the definition in the Glossary in Appendix 1 of PS19/13) whether direct or through a collective investment scheme. The disclosure will need to explain how its investment strategy contributes to the medium to long term performance of the assets of the SRD institutional investor. The disclosure must include, but is not limited to, details of areas such as turnover, the firm’s policy on securities lending and whether any conflicts of interest have arisen and, if so, how these conflicts were dealt with. Please see COBS 2.2B.9 onwards for further details.

PS19/13 advises that the FCA will not be providing Handbook guidance or any templates “at this time”. However it does suggest that the industry may wish to develop additional guidance to aid interpretation and promote comparability of disclosures. The paper goes on to say that a coordinated

industry approach might be particularly useful in the case of voting disclosures and the FCA is open to working with stakeholders on this.

The new rules will come into force on **10 June 2019**. However we would draw attention to paragraph 1.42 (page 9) of PS19/13 which opens the possibility of some temporary relief to firms should it be required:

“This means that asset managers and life insurers will have to publish their engagement policy, or explain why they have not done so, by 10 June 2019. However, we recognise that the rules come into effect quickly after publication. So, for an initial period, a firm can comply with the relevant rule by explaining what it is doing to develop an engagement policy. This may include, for example, simply explaining that it is developing one, or considering whether or not to have one”

The new rules can be found in **Appendix 1** of PS19/13 – note that the rules are in two separate instruments. FCA 2019/68 addresses changes to COBS (and to SYSC although it is only relevant to insurers and reinsurers) whilst FCA 2019/73 concerns itself with DTR and LR.

Useful Links

[PS19/13](#)

[Directive 2017/828 - "SRD II"](#)

[Directive 2007/36 - "SRD I"](#)

[Optima February Alert link](#)