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Shareholder Rights Directive II (SRD II) – Final Phase

Of particular interest to: firms providing safekeeping and/or administration of shares or that maintain securities accounts on behalf of shareholders

In brief

The final phase of SRD II will apply from **3 September 2020** and will include the right of a company to identify its shareholder. As a consequence, a firm that is categorised as an 'intermediary' will have to comply with such a request within defined time limits. For this purpose an **intermediary** is defined as either a **MiFID firm**, a **credit institution** or a **Central Securities Depository** "which provides services of safekeeping of shares, administration of shares or maintenance of securities accounts on behalf of shareholders or other persons".

Summary

The nature of SRD II (2017/828) was to apply amendments to SRD I (2007/36) rather than rewrite the latter. The majority of these amendments, including the need for an 'engagement policy' and annual disclosure, applied from June 2019 (see our **Alert on SRD II** via 'Useful Links' below, which also includes links to both SRD I and SRD II). However, the following elements were **delayed** as their date of application was dependent upon the need to develop implementing measures (**Implementing Regulation 2018/1212 – "IR"**):

- Right of identification of shareholders (Article 3a)
- Transmission by intermediaries of certain company information to shareholders (Article 3b)
- Facilitation of the exercise of shareholder rights (Article 3c)

Article references in the above refer to those Articles added to SRD I by way of Article 1 of SRD II.

Although SRD I references the identification of shareholders, the effect of **Article 3a** above means that there will now be a framework in place for companies to make a request to an intermediary for the identification (as a 'right') of certain shareholders (the framework suggests those shareholders holding 0.5% or more of shares or voting rights). Such a request must be submitted in the format of Table 1 of the **Annex** to the **IR** ('minimum requirements') with the intermediary's response ("without delay") in the format of Table 2 of that Annex. Where there is more than one intermediary in a **chain** of intermediaries then a company's request for identification of shareholders must be transmitted along that chain (again, without delay) until the intermediary holding that information is reached.

Article 3b will mean that intermediaries are obliged to transmit certain company information relating to shareholders' rights to the shareholder without delay e.g. notification of a general meeting.

Article 3c requires intermediaries to facilitate the exercise of the rights by a shareholder such as the right to participate and vote in general meetings.

For the avoidance of doubt, any reference to 'company' and 'shares' refers to companies with a registered office in a Member State, the shares of which are admitted to trading on a regulated market situated or operating within a Member State.

As mentioned above, the Annex to the IR contains the format of both requests by an issuer and the responses by the intermediary. For those firms that may become a '**responding intermediary**' it will be noted that the format includes the need for a Legal Entity Identifier ("**LEI**") to be provided. A potential responding intermediary that does not currently have an LEI should consider acquiring one before September. Although not the only issuer of LEIs, the London Stock Exchange is a body that is authorised for the global allocation of LEIs (see 'Useful Links').

Useful Links

[Alert on SRD II](#)

[SRD II Implementing Regulation 2018/1212](#)

[Global LEI Foundation](#)

[LSE LEI](#)

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