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European Commission
Brussels
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Joint trade association letter on the impact of COVID-19 on the further implementation of the Shareholder Rights Directive II

The European Banking Federation (EBF), the Association for Financial Markets in Europe (AFME), the International Securities Lending Association (ISLA), the Association of Global Custodians (AGC), the European Central Securities Depositories Association (ECSDA), the Securities Market Practice Group (SMPG), the European Savings and Retail Banking Group (ESBG), the Associazione Intermediari Mercati Finanziari (ASSOSIM), the Association

française des Professionnels des Titres (AFTI), the European Association of Co-operative Banks (EACB) and European Issuers (EI) (together, the "Associations") appreciate the efforts of regulators to ensure deeper shareholder engagement in corporate governance, however we would like to highlight our deep considerations of the legislative intentions behind the review of the Shareholder Rights Directive (SRD II). For many years, the industry has undertaken significant efforts towards harmonisation of corporate events, some of which are to be further enhanced in SRD II and its Implementing Regulation 2018/1212 ("IR"). However, some challenges, which we describe below, have arisen that affect implementation efforts and possibly threaten the complete and successful adoption of SRD II.

The Associations acknowledge that current implementation efforts have been challenged even before the advent of the global COVID-19 crisis, which will further strain the industry's capacity to implement the Directive in a timely manner. At this stage, the Associations believe it will be difficult, or nearly impossible, to meet the implementation deadline of 3 September 2020.

In particular, due to the unprecedented disruptive nature of the pandemic, the daily activities of our members are significantly impacted by the necessary emergency measures put in place to mitigate the consequences of the COVID-19 crisis. These include substantial internal reprioritisations and shifts of resources which make it more difficult for all market actors to ensure the complete and timely compliance with SRD II.

Therefore, through this letter the Associations ask you to consider a delay in the implementation date of the Shareholder Rights Directive II and of the IR by twelve months, to 3 September 2021, or other equivalent measures providing for a synchronous postponement across EEA and EU Member States. Below, we would like to provide you a brief overview of the current situation and the specific reasons in support of such request for postponement.

1) Repurposing IT personnel towards "run-the-institution" activities

Despite SRD II programmes of financial infrastructures and several market participants being currently in line with required delivery timelines, firms must implement effective contingency plans in the face of the COVID-19 pandemic. The exceptional and widespread impact of the virus and the necessary measures to contain it are affecting the operational capacity of financial institutions. IT staff and Technology support personnel are now being employed at full capacity to ensure market and business continuity to meet the demands of clients, central banks and regulators. The result is that "run-the-institution" activities

have gained full priority over “change-the-institution” activities. Indeed, ESMA itself has called attention to the resulting increased operational risk caused by the crisis in its recent Risk Update.¹

As you will undoubtedly appreciate, firms have had to implement various contingency plans, including displacement of staff and other operational priorities, which deeply affect institutions' capacity to continue focusing on the IR requirements. This involves, in particular, the testing phase of the processes of transmission of information along the chain of intermediaries, which was intended to be carried out in the coming months, but are now being postponed due to the pressure of COVID-19 on IT core operations.

2) Postponement of general meetings

The Associations also noticed that, while under national company law the annual general meetings (AGM) are usually held by the end of Q2, the COVID-19 pandemic is now forcing issuers of shares to respond to the crisis by postponing the annual meetings for shareholders or organizing them on a virtual basis. This measure impacts not only the internal organisation of companies and financial actors (to adapt process flows to support the new rules introduced to facilitate shareholders rights), but also, depending on the date of the postponed AGMs, the timetables for putting in place all requirements set out in the IR in time for the new meetings.

Considering the unpredictable duration of the COVID-19 and the related containment measures, should there be no postponement of the date of entry into force of the Implementing Regulation, our members consider it very unlikely that all the operational procedures in support of the new general meetings season, expected around September, could be carried out in full compliance with SRD II. A situation of fragmented compliance with requirements would create an additional burden, and therefore become even more complicated to manage. The effect would be detrimental and against the purpose of the Directive – which is to foster greater collaboration between Issuers and their shareholders.

Compounding the challenge for the industry are the existing gaps and discontinuities among the various national SRD II implementing legislations, which are significantly

¹ “Our outlook on operational risks is negative given the rising reliance on remote working arrangements, even if Business Continuity Plans are widely reported as working. To what extent these risks will further materialise will critically depend on two drivers: The economic impact of the pandemic, and any occurrence of additional external events in an already fragile global environment.” *ESMA Risk Dashboard Risk Update* (2nd April 2020).

exacerbated and made harder to reconcile by the pandemic crisis. To better identify and deal with the SRD II implementation gaps, after the Implementing Regulation was published, the Associations have set up an industry Steering Group to oversee progress towards implementation of SRD II and established task forces to prepare coherent implementation documentation². A specific set of Market Standards, intended to achieve a coherent and consistent implementation of the legislation, but which also go beyond the minimum requirements set out in the IR, is currently being finalised. These Task Forces have focused their activities on the following topics: Shareholder Identification, General Meetings, Golden Operational Records and Messaging.

In this regard, we would like to bring to your attention also the following concerns that we gathered during this exercise:

National transposition of the Directive is not yet final in some Member States

The Directive provides for a possibility of choice in a number of key regulatory provisions at the domestic level, including on key topics such as the definition of shareholder. However, until now, in a number of the EEA and EU Member States, the transposition has not been finalised and, therefore, the choice of options cannot be confirmed by the national legislators. This is especially due to changes that might intervene between the draft and the final version of national implementing law and related technical measures. In many other jurisdictions, national transpositions only occurred recently – well beyond the national compliance date. At this stage of the process financial institutions are in their implementation deployment phase, including the review of the details of the transpositions. Should there be any new or different requirement in the national law from the final draft, this will have a deep impact on the institutions' capacity to adapt and finalise their preparations and to ensure the necessary technical developments are executed on time to be fully compliant on 3 September 2020, the current implementation date.

In this context, it should also be noted that ESMA was not yet able to publish on its website the overview of the thresholds for shareholder identification in the Member States to be published by 19 June 2019 (Art. 3a(7) SRD II). This information is also important for the implementation of the new rules in practice.

² In this context, in January 2020, the SRD II Industry Steering Group has asked one of the industry associations to perform a survey on the readiness of the market participants to comply with the SRD II requirements. 56,5% of respondents indicated that, for the reasons outlined below, they expect not to be able to fully comply with SRD II requirements by the implementation date of September 2020.

Standardised formats

Although the industry has worked on preparing messaging protocols compliant with the tables in the annex of the implementing regulation 2018/1212, the adoption of such protocols requires significant IT adaptations, which may not be achieved by September 2020, following the repurposing of IT personnel towards “run-the-institution” activities to adapt to current emergency conditions, as previously explained.

The high reliance on the new ISO solutions and the short time frame for end-to-end testing among financial institutions raise important concerns about the industry’s ability to timely comply with SRD II and the IR.

Conclusion

In view of the above concerns, **we ask you to consider, as a matter of urgency, a delay in the implementation date of the Shareholder Rights Directive II and the Implementing Regulations by twelve months, to 3 September 2021, so as to provide the European financial industry with a more realistic timeline to fully comply with SRD II and the IR and achieve a higher level of convergence in the implementation practices.**

Whilst we appreciate any delay needs to be minimal, we also need to be mindful of why the implementation of SRD II was originally scheduled for September 2020. In essence, we are requesting a 12-month delay in order to ensure that the SRD II implementation does not coincide (with further adverse impacts on all stakeholders) with the highly active period of Annual General Meetings (AGM) and dividend distributions. This is consistent with the rationale for selecting September 2020 as the most practical implementation date in the first place. At the same time, in line with ECB guidance³ and other relevant recommendations, following the COVID-19 outbreak, dividend distributions are expected to be delayed at least to October 2020. This, too, would coincide with the current implementation timetable, which would also be a major concern. Implementation in September 2021 would seem to be the rational and reasonable date for postponement in order to avoid the (delayed) AGM and dividend payment period in Q4 2020 and the next AGM and dividend payment season in Q2 2021.

³ [Recommendation of the European Central Bank of 27 March 2020 on dividend distributions during the COVID-19 pandemic and repealing Recommendation \(ECB/2020/1\) \(ECB/2020/19\)](#)

Although a general postponement of the SRD II compliance date remains the preferred option, the Associations are cognizant of the potential complexity of arranging this through a single legislative act. Hence, the Associations would be open to the adoption of alternative equivalent measures that are conducive to a synchronous postponement of the entry into force of SRD II across EEA and EU Member States.

We thank you for your consideration and confirm our high commitment to support the safe functioning of the markets, the coherent implementation of regulatory requirements and harmonisation of corporate events practices in Europe. We remain attentive to your demands and available for any question that you may have on the matter.

Yours sincerely,

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