



NORTHERN  
TRUST

# SHAREHOLDER RIGHTS DIRECTIVE II

Frequently  
Asked Questions

*Asset Servicing Solutions*

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## Contents

What Is The Purpose & Background Of SRD II? .....	3
What Is The Timeline Of The Directive? .....	4
Who Is Impacted By The Directive? .....	4
How Is Northern Trust Monitoring The Changes? .....	5
Is There A Requirement To Be SWIFT Compliant? .....	5
What Are The General Voting Participation And Corporate Event Impacts? .....	6
What Are The Shareholder Disclosure Rules? .....	8
Will Northern Trust Adhere To The Cost Transparency Requirements Of The Directive? .....	9
Contact Details .....	10

***Please note:*** Northern Trust is aware of lobbying efforts by Industry working groups to delay the Implementation of SRDII due to the COVID-19 crisis and to allow more time for impacted parties to fully comply and achieve a higher level of convergence in the implementation process.

*At time of writing (21 April, 2020) no formal announcement has been made confirming a delay to the implementation.*

*Northern Trust will continue to monitor the situation and provide updates when available.*

### WHAT IS THE PURPOSE & BACKGROUND OF SRD II?

The original **Shareholder Rights Directive** came in to force in 2007. **SRD II** as an amending Directive entered in to force in 2017. Member States were due to amend their laws to implement the Directive by June 2019, with key requirements coming in to force in September 2020. The overall aim of the Directive is to further improve corporate governance. This is achieved through a multi-pronged approach per the provisions of SRD II. The focus is primarily on encouraging long term shareholder engagement, improving transparency and seeking to reduce short termism.

Improving shareholder participation in company meetings and accelerating the exercising of shareholder rights whilst providing investors with more time to consider voting options ahead of lodging votes are key intentions of the Directive. Further in a bid to foster closer ties between companies and their shareholders, recognition is also given to the current challenges prohibiting free dialogue between parties.

The Directive recognizes that complex chains of intermediaries between issuers and shareholders limit the information flow between parties and seeks to redress this balance.

The Directive has wide implications impacting multiple parties. Please see below a summary of some of the key articles comprising SRD II in this context:

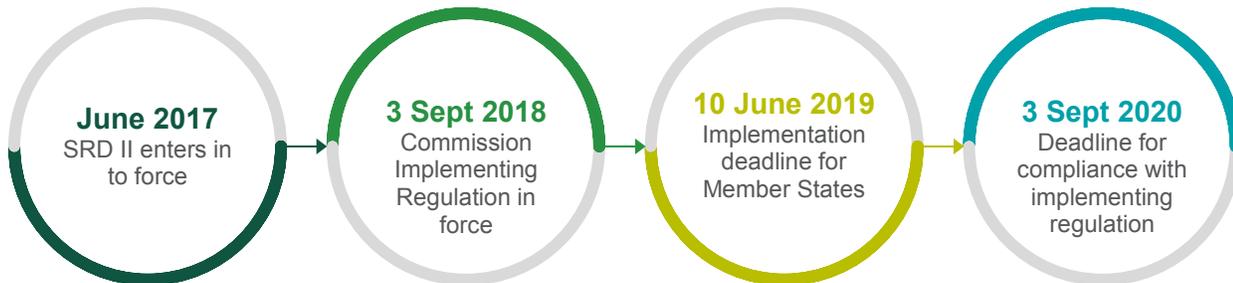
<b>3a</b>	Identification of shareholders
<b>3b</b>	Transmission of information
<b>3c</b>	Facilitations of the exercise of shareholder rights
<b>3d</b>	Proportionality and transparency of costs by Intermediaries
<b>3g</b>	Disclosure of engagements policy (institutional investors and asset managers)
<b>3h</b>	Disclosure requirements on institutional investors (e.g. key points of the investment strategy)
<b>3i</b>	Disclosure requirements on asset managers (e.g. Investment approach)
<b>3j</b>	Transparency of proxy advisors (e.g. report on Code of Conduct)
<b>9a &amp; c</b>	Remuneration report – “say on pay”

Alongside the Directive the Commission Implementing Regulation (EU 2018/1212) supports some of the requirements put forward by delivering more detailed rules specifically in relation to Articles 3 a), b) and c).

These Articles are a key area of focus for Intermediaries in order to be able to practically implement the Directive. This publication aims to further explain the requirements and their implications to our clients.

### WHAT IS THE TIMELINE OF THE DIRECTIVE?

Please see below a timeline of key dates provided for under the Directive:



The Commission Implementing Regulation applies from 3 September 2020, and as referred to in the previous section, lays out minimum requirements that must be adhered to. As Northern Trust continues to monitor activity at Member State level, it is worth highlighting that not all Member States have met the 10 June 2019 implementation deadline. Northern Trust continues to monitor as the markets seek to finalize their position and provide due guidance and confirmation in this context.

### WHO IS IMPACTED BY THE DIRECTIVE?

- The Directive applies to **institutional investors, proxy advisors, asset managers, Issuers and Intermediaries**.
- The term “Intermediary” is defined under Article 1 of the Directive as an investment firm, **credit institution, and a central securities depository (CSD), which** provides services of safekeeping and the administration of shares or the maintenance of securities accounts on behalf of shareholders or other persons. **Custodians** such as Northern Trust are deemed to be an “Intermediary” in this context.
- **All investors** – not just those located in EU. The rules are considered highly extraterritorial as they apply to any investor with holdings in EU listed assets.
- **Issuer companies** located in the EU with shares admitted to trading on a regulated market or to companies registered outside the EU whose shares are listed on an EU regulated market.

The thrust of the Directive is intended to relate to activity regarding holding of “shares”. However, in certain cases it appears some Member States – through their transposition activity – may widen the scope to capture bonds and / or ADR’s and GDR’s. Northern Trust is working to identify in which markets this will be the case in order to adapt service requirements accordingly.

### HOW IS NORTHERN TRUST MONITORING THE CHANGES?

A Directive seeks to provide certain results that must be achieved, but Member States have discretion as to how they choose to enshrine those requirements via transposition in to their domestic legislation – this is distinct to a Regulation which is legally binding. Despite the Directive requiring transposition by 10 June 2019, some Member States have still not finalized their position under statute. Based on a review of the legislation to date, the picture emerging is one of differing requirements across Member States. Further activity is still underway and we await guidance and clarification in certain areas from some markets, therefore there is a current need to ensure continual horizon scanning to capture further details as they unfold.

To this end, Northern Trust is actively participating in a number of key Industry working groups; we are also liaising closely with our sub-custody network in addition to our proxy service provider. We are undertaking our own in-house research utilizing recognized information feeds and we have also sought to procure advice on the same.

As further clarification comes to the fore we are ratifying with our network to ensure resultant services are aligned to local interpretation ahead of September 2020.

### IS THERE A REQUIREMENT TO BE SWIFT COMPLIANT?

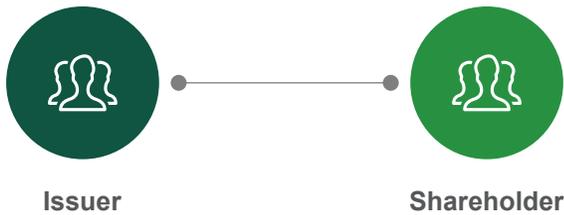
The Implementing Regulation encourages communications between Intermediaries to be effected via “machine readable and standardized formats”. This will support the intention of the Directive and facilitate enhanced straight through processing where required. SWIFT is in the process of developing new ISO20022 to support the requirements of the Directive to enable compliance with SRD II, and this is expected to be delivered in Q4 2020. In addition Northern Trust, in conjunction with our network and proxy provider, will be able to support existing message channels. We would also note that it is the responsibility of the Intermediary and Issuer to ensure information transmitted is done so within secure channels.

## WHAT ARE THE GENERAL VOTING PARTICIPATION AND CORPORATE EVENT IMPACTS?

In the spirit of enhancing Shareholder and Issuer engagement and improving communication lines between parties, SRD II introduces additional message types & requirements within the proxy voting & corporate event chain. The effect will be an increase in data transmission volumes and communications as below, but with the overall benefit of providing improved facilitation of the exercising of shareholder rights.

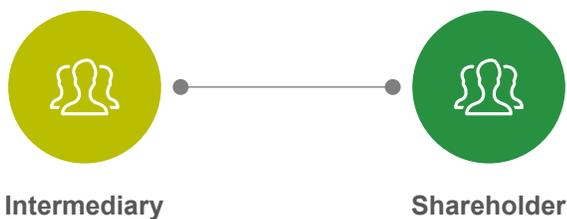
### TRANSMISSION TYPES

The Implementing regulation specifies the minimum requirements regarding the content and format of message transmissions described as follows:



- a) General Meeting Notices
- b) Voting receipt
- c) Confirmation of the recording and counting of votes
- d) Corporate event announcements (other than general meetings)

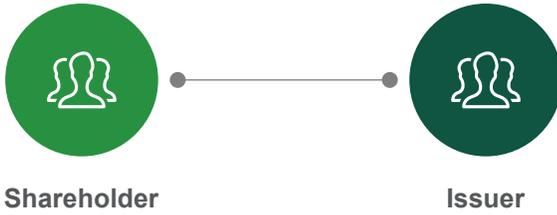
The above transmissions will flow from the Issuer to the Shareholder passing through the chain of Intermediaries.



- e) Confirmation of Entitlement

The above transmissions will flow from the **last** Intermediary in the chain to the Shareholder.

## SHAREHOLDER RIGHTS DIRECTIVE II



- f) Notice of participation
- g) Shareholder instructions (on corporate events)

The above transmissions will flow from Shareholder to Issuer passing through the chain of Intermediaries.

### TIMING/DEADLINES

- Each Intermediary in the chain is required to pass on transmissions same day. If a transmission is received after 4pm, the Intermediary must ensure it is passed on to the next Intermediary in the chain by 10am to the following day.
- Issuers are required to provide confirmation of voting receipt immediately after the vote is cast.
- In respect of corporate events and shareholder identification process the last Intermediary shall not set a deadline less than 3 business days before record date or Issuer deadline.
- Transmissions concerned with recording and counting of votes must be sent by the Issuer in a timely manner and no later than 15 days after the request or General Meeting, whichever is later.
- Issuers will also be required to issue notifications on the corporate event on the same day as the legal announcement.
- Confirmation of Entitlement – if provided prior to record date, the last Intermediary shall ensure the confirmation is updated, where necessary, to align the information.

WHAT ARE THE SHAREHOLDER DISCLOSURE RULES?

a) Article 3a) of the Directive provides that Member States shall ensure for the first time companies have the right to identify their shareholders. They may also impose a threshold of 0.5% on such requests whereby holders of less than this amount of the issuing company will not be required to make such disclosures. In this context, the Directive also puts emphasis on the fact that the passing on of such requests should be made “without delay” and that the request should also be passed on to the next intermediary within the chain without delay. We would also note that Issuers have the right to make such requests at any time and there is no limit as to how many requests can be made.

b) Responses back to the Issuer following a request will be transmitted directly to the Issuer or their market representative without having to go back through the chain of intermediaries.

c) Member States had until June 2019 to advise ESMA whether or not they wished to limit shareholder identification to only those shareholders holding more than 0.5% of the issuing company. Northern Trust is currently in the process of reviewing the latest per Member State position in this context.

d) The Implementing Regulation also includes minimum standards in this context. Specifically Article 3, “Request to disclose information regarding shareholder identity and response” refers to prescriptive formats provided in relation to both the request from the Issuer and the response from the shareholder to be adhered to.

e) Northern Trust will be using our 3rd party proxy provider to ensure we are able to support our clients’ needs in this regard. To that end, we are working closely with them to ensure alignment of requirements and that required information is held to facilitate due responsiveness.

f) The definition of “shareholder” under the Directive is intended to facilitate the identification of persons who exercise shareholder rights, and more specifically voting rights. In certain Member States this is considered to be the party listed on the register. However, this approach does not contemplate instances where the final entitled shareholder is not the name on the register but rather an indirect holder of the assets. We would note that a number of Member States are still clarifying the position.

## SHAREHOLDER RIGHTS DIRECTIVE II

g) Deadlines – where an intermediary receives a request to disclose shareholder identity, they must pass on the request no later than close of business on the business day the request is received or if received after 4pm, by 10am the next day. Responses to such requests must be provided no later than record date + 1 if the record date is in the future, or if the record date has passed, no later than request date + 1 (if the record date is less than 7 days old) or by Issuer deadlines (if the record date is more than 7 days old).

h) In connection with the Implementing Regulation, there is a need for Intermediaries to be able to classify impacted shareholder accounts as follows:

- O** Shareholding on own account
- N** Nominee shareholding
- B** Beneficial shareholding
- U** Unknown

As a result, Northern Trust is in the process of classifying our client accounts to enable completion of responses to shareholder disclosure requests. Where we are unable to classify, we will contact impacted clients in order to confirm.

## WILL NORTHERN TRUST ADHERE TO THE COST TRANSPARENCY REQUIREMENTS OF THE DIRECTIVE?

As referenced in section 1) above, Article 3d) of the Directive relates to transparency and proportionality of costs. As a result, Intermediaries are required to disclose publicly related charges for each component of related services. There is also a requirement for Intermediaries to ensure such charges are “proportional” to services rendered, and Member States have the option to prohibit the charging of such services. Northern Trust is making required preparations in order to comply with the provisions of the Directive.

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