

## Swedish Securities Markets Association

### Response to ESMA Call for Evidence on SRD2

2022-11-28

Responses and comments marked with **bold** letters. Unanswered parts and questions of the Call for Evidence have been omitted in this document.

## 3 General questions

### 3.1 Introduction

16. This section sets out questions of a general nature which ESMA invites all interested stakeholders to respond to, regardless of the role they play in the financial markets. The questions aim to provide a general understanding of the practices currently put in place and the difficulties that may arise from the practical application of SRD2 provisions. This section also sets out a few targeted questions on facilitating shareholder engagement as set out by the CMU action plan (Action 12 of the CMU action plan). In addition to this section, sections 4 - 7 outline questions which are targeted at specific groups of stakeholders (*i.e.*, investors, issuers, intermediaries and proxy advisors).
17. In connection with this first set of questions, ESMA would like to reiterate the invitation for respondents to provide factual answers which are supported by reasoning, as well as clear evidence and examples to the widest possible extent. Furthermore, ESMA invites associations representing specific groups of stakeholders to select, in Q1, the group of stakeholders they represent or to select option g) 'other'.

### 3.2 Questions

#### 3.2.1 Background

Q1: What is the nature of your involvement in financial markets?

*[More than one option allowed]*

- a) Investor
  - i. Individual (retail) investor;
  - ii. Institutional investor (such as a pension fund or an insurance undertaking);
  - iii. Asset manager (investing on behalf of individual clients or institutional investors);
- b) Issuer (in particular, EU companies whose shares are listed in the EU);

- c) **Intermediary**
  - i. **Credit institution;**
  - ii. **Investment firm;**
  - iii. Central securities depository - CSD;
- d) Proxy advisor (*i.e.*, a legal person providing research, advice or voting recommendations);
- e) Other.

To facilitate the comprehensibility of your response to this Call for Evidence, please describe your role in the financial industry. *[Max. 2000 characters]*

**The Swedish Securities Markets Association (SSMA) is a trade association, founded in 1908, representing investment firms conducting business in the Swedish securities markets. As of today, the SSMA has 24 members, constituting of banks, investment banks and investment firms.**

Q2: Please specify if you are a non-EU or EU actor, and in the latter case, in which Member State you (or, if you are an association, your members) are based/most active in.

**[EU Actor]**

**[Non-EU Actor]**

If EU Actor is selected, please specify:

[Pan-European Organisation]

[Ireland]

[Austria]

[Italy]

[Belgium]

[Latvia]

[Bulgaria]

[Lithuania]

[Croatia]

[Luxembourg]

[Cyprus]

[Malta]

[Czechia]

[Netherlands]

[Denmark]

[Poland]

[Estonia]

[Portugal]

[Finland]

[Romania]

[France]

[Slovak Republic]

[Germany]

[Slovenia]

[Greece]

[Spain]

[Hungary]

**[Sweden]**

If non-EU Actor is selected, please specify. *[Max. 2000 characters]*

### 3.2.2 On shareholder identification, transmission of information and facilitation of the exercise of shareholder rights

Q3: Do you consider that shareholder identification, within the meaning of Article 3a, has improved following the entry into application of this provision and the Implementing Regulation?

[Not at all]

**[To a limited extent]**

- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response. *[Max. 2000 characters]*

**The SSMA considers that shareholder identification generally has improved to a limited extent. In cases where the relevant issuers are within the scope of the SRD2 and where the relevant counterparties use the ISO 20022 messages created for shareholder identification disclosure the process has substantially improved. In other cases, e.g., when issuers or their agents do not use the ISO 20022 shareholder identification disclosure messages, the SSMA has not noted any improvement. Therefore, the SSMA believes that shareholder identification under SRD2 would be substantially improved if all stakeholders adopt and use the ISO 20022 shareholder identification disclosure messages, enabling an automated process.**

Q4: Do you consider that harmonising the definition of shareholder across the EU is a necessary step to ensure the full effectiveness of Article 3a provisions?

- [Not at all]
- [To a limited extent]
- [To a large extent]**
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response, specifying any remaining obstacles to the process of identification of shareholders. *[Max. 2000 characters]*

**The SSMA considers that a harmonised definition of shareholder would be greatly beneficial for the EU. However, the SSMA believes that such harmonisation would be very difficult to achieve in practice, due to differences in the member states' applicable national law.**

Q5: In your opinion, who should be regarded as 'shareholder' for the purposes of the SRD if this definition was to be harmonised across the EU?

- [The natural or legal person on whose account or on whose behalf the shares are held, even if the shares are held in the name of another natural or legal person who acts on behalf of this person (beneficiary shareholder)]**
- [The natural or legal person holding the shares in his own name, even if this person (nominee shareholder) acts on behalf of another natural or legal person]
- [Other].

Please explain and provide evidence to corroborate your response. *[Max. 2000 characters]*

**Since finding a *general* EU-harmonised definition of shareholder may be difficult due inter alia to differences between member states' national legislation, the SSMA suggests narrowing the scope to a harmonised definition of the term only for the purpose of shareholder identification disclosure within the context of the SRD2.**

**If the legislator were to propose an EU-harmonised definition of shareholder, the SSMA suggests that such a proposal should be based on who the beneficiary shareholder is.**

Q6: Do you consider that the transmission of information along the chain of intermediaries has improved following the entry into application of Article 3b and the Implementing Regulation?

- [Not at all]



**[To a limited extent]**

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response. *[Max. 2000 characters]*

**The SSMA's members have found that there has been an improvement in the transmission of information for general meeting notifications, with the implementation of the ISO 20022 meeting messages. However, as regards corporate actions messages, the SSMA believes the situation remains roughly equal to pre-SRD2 conditions. For corporate action events, ISO 15022 and ISO 20022 messages are both fit for purpose, and accordingly the CSDs' and non CSD intermediaries' implementation projects were primarily devoted to general meetings and shareholder identification disclosure.**

**The SSMA thinks that more improvements could be made if issuers would be able, and required, to provide their issuer CSD with timely and correct corporate action event information in a format that would allow the issuer CSDs to automatically forward the information as ISO 15022 or ISO 20022 messages to CSD participants, for down-stream intermediaries to further increase straight-through processing of event information.**

Q7: Do you consider that the facilitation of the exercise of shareholder rights by intermediaries has improved following the entry into application of Article 3c and the Implementing Regulation?

[Not at all]

**[To a limited extent]**

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response. *[Max. 2000 characters]*

**The SSMA and its members have found that there has been an improvement in the facilitation of the exercise of shareholder rights for general meetings. This may be the result of use of ISO 20022 meeting messages, as these more easily enable automated processing, and/or the increased regulatory requirement for active shareholder engagement. As regards the exercise of shareholder rights in corporate actions events, the SSMA believes that shareholders were fully able to exercise their rights prior to SRD2.**

**However, it should also be noted that the exercise of shareholder rights in general meetings is dependent upon national requirements, such as power of attorney – from the shareholder or from the name on register, depending on market – and lack of electronic voting possibilities offered by issuers. Our members' experience is that non-domestic shareholders still face more barriers than domestic shareholders when it comes to general meeting participation.**

Q8: Do you consider that transparency, non-discrimination and proportionality of charges for services provided by intermediaries in connection with shareholder identification, transmission of information and exercise of shareholder rights (*i.e.*, in compliance with Article 3d) have improved following the entry into application of this provision?

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

**[No opinion]**

Please explain and provide evidence to corroborate your response, providing examples of the jurisdictions you are most familiar with. *[Max. 2000 characters]*

**As a representative of intermediaries, the SSMA believes that other actors are more suited to answer this question.**

Q9: Do you consider that the practices of third-country intermediaries (*i.e.*, intermediaries which have neither their registered office nor their head office in the EU but provide services with respect to shares of EU listed companies) are in line with the provisions of Chapter Ia and the Implementing Regulation?

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

**[No opinion]**

Please explain and provide evidence to corroborate your response and specify any significant differences you may be aware of as regards the application of this Chapter by third-country intermediaries vis-à-vis EU intermediaries. *[Max. 2000 characters]*

**The SSMA has very limited practical experience regarding this and refrains from answering.**

Q10: Do you consider that the processes put in place by intermediaries for the purpose of implementing Chapter Ia (*i.e.*, shareholder identification, transmission of information and facilitation of the exercise of shareholder rights) are working in line with the relevant provisions of the SRD2 and the Implementing Regulation?

[Not at all]

**[To a limited extent]**

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response, explaining if/how improvements could be made. *[Max. 2000 characters]*

**The SSMA believes that non-CSD intermediaries have to a large extent implemented processes that are working in line with the relevant provisions, whereas the CSD intermediaries have done this to a somewhat more limited extent.**

Q11: Have you encountered any specific obstacles or difficulties in the practical application of the SRD2, namely Chapter Ia and the Implementing Regulation, also in light of the SRD2's transposition in Member States' national law (*e.g.*, regarding transparency of fees when a service is provided by more than one intermediary in a chain of intermediaries or when the company is allowed to request the CSD, another intermediary or third party to collect



information regarding shareholder identity)? Please specify your response in relation to the following topical areas:

- a) Shareholder identification;  
[Y]  
[N]  
[Don't know]
- b) Transmission of information;  
[Y]  
[N]  
[Don't know]
- c) Facilitation of the exercise of shareholder rights;  
[Y]  
[N]  
[Don't know]
- d) Costs and charges by intermediaries;  
[Y]  
[N]  
[Don't know]
- e) Non-EU intermediaries.  
[Y]  
[N]  
[Don't know]

Please explain and provide evidence to corroborate your response, clarifying whether encountered obstacles or difficulties relate to cross border elements (both within and outside the EU). *[Max. 2000 characters]*

**We believe that the SRD2 has been implemented differently in different member states which sometimes causes issues. Increased harmonisation between the member states' national law – without gold-plating – would help alleviating such issues.**

- a) **Our members sometimes receive shareholder identification disclosure requests in other formats than the ISO 20022 shareholder identification disclosure messages. Our members have also experienced that they sometimes are required to provide actors in other member states with more information than what is stipulated in the SRD2. Also, the members have experienced situations where a conflict of law between the SRD2 and other applicable laws, e.g., regarding banking secrecy and GDPR, becomes an issue.**
- b) **National differences in determination of what corporate action events are in scope of SRD2 have prevented any substantial changes regarding transmission of such information. The processes for transmission of general meeting (GM) information have substantially improved with SRD2.**
- c) **Our members believe that as the exercise of shareholder rights in general meetings is dependent upon national requirements, non-domestic shareholders still face more barriers than domestic shareholders when it comes to GM participation,**

though the situation has improved with SRD2.

- d) It is important that the intermediaries have the right to charge the issuer with the costs for processes in scope of SRD2, for the intermediaries to receive cost coverage. It is however burdensome for the intermediaries to familiarise themselves with the legal systems in all the relevant member states, which is necessary since the ability to charge for costs is governed by the law in which the issuer has its registered office.
- e) Our view is that not all third-country intermediaries have implemented processes to comply with SRD2, and that compliance with shareholder identification can be an issue for intermediaries from countries where such disclosure is prohibited by law.

Q11.1: If you have answered positively to at least one of the points listed in Q11, please specify if it was in relation to the following:

- a) The attribution and evidence of entitlements (incl. as regards the record date position);  
[Y]  
**[N]**  
[Don't know]
- b) The sequence of dates for corporate actions and deadlines;  
[Y]  
[N]  
[Don't know]
- c) Any additional national requirements (e.g., requirements of powers of attorney to exercise voting rights);  
[Y]  
**[N]**  
[Don't know]
- d) Communication between issuers and central securities depositories (CSDs);  
[Y]  
[N]  
**[Don't know]**
- e) Any other issue.  
[Y]  
[N]  
[Don't know]

Please explain and provide evidence to corroborate your response. [1 box per option, Max. 2000 characters]

- b) The SSMA's view is that, in general, the requirement on deadlines is met by intermediaries. It can, however, be difficult to meet the requirement to not provide the end investor with a deadline more than 3 business day prior to market deadline.

**e) Enforcement of SRD2 outside of EU/EEA is difficult.**

Q12: If you have encountered any difficulties or obstacles to the fulfilment of obligations under Chapter Ia (also relating to cross border elements - both within and outside the EU - and in light of the SRD2's transposition in Member States' national law), how do you think improvements could be made going forward? Please specify your response in relation to:

- a) Shareholder identification;
- b) Transmission of information;
- c) Facilitation of the exercise of shareholder rights;
- d) Costs and charges by intermediaries;
- e) Non-EU intermediaries.

Please explain and provide evidence to corroborate your response. *[1 comment box per option, Max. 2000 characters each]*

**The SSMA's members have noticed that rules and regulations regarding information security that financial institutions are required to comply with sometimes are in conflict with the SRD2 provisions. For example, financial institutions, due to security requirements, may not be able to provide shareholder identification disclosure to issuers and their agents through e.g., e-mail or by filling out forms on websites, despite the SRD2 allowing for such channels to be used.**

**The SSMA's members have also noticed that issuers sometimes fail to provide the CSDs with correct and/or complete and timely information, which in turn makes it difficult for the intermediaries to comply with the SRD2 requirements on transmission of information.**

Q13: Overall, do you consider that Chapter Ia provisions have improved shareholder engagement, thereby supporting the long-term value creation and sustainability objectives established by the Directive?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]**

Please explain and provide evidence to corroborate your response, also specifying what actions could be put in place to improve shareholder engagement. *[Max. 2000 characters]*

**As a representative of intermediaries, the SSMA believes that other actors are more suited to answer this question.**

Q14: Do you believe that rules on the following points should be further clarified and/or harmonized:

- a) Attribution and evidence of entitlements (incl. as regards the record date



position);

[Y]

**[N]**

[Don't know]

- b) The sequence of dates for corporate actions and deadlines;

[Y]

**[N]**

[Don't know]

- c) Possible additional national requirements (e.g., requirements of powers of attorney to exercise voting rights);

[Y]

[N]

[Don't know]

- d) Transmission of information (incl. rules on communications between CSDs and issuers/issuer agents).

[Y]

[N]

[Don't know]

Please explain and, if your answer is yes, please specify what actions could be put in place. *[Max. 2000 characters]*

**a) & b) From a Swedish perspective, the SSMA's members have not experienced many issues as regards a) and b).**

**c) The SSMA and its members are aware that certain national rules regarding requirements of powers of attorney to exercise voting rights may complicate the process and increase the costs for such actions. However, the SSMA believes that it would be very difficult to adopt harmonised rules in this area.**

**d) The SSMA notes that there are, and rightfully so, many rules and regulations that the intermediaries are subject to. For the intermediaries to be able to perform their duties, it is however important to receive sufficient, correct and timely information from the issuers of shares. The SSMA's members sometimes experience issuers failing to provide correct information to the CSDs, causing obstacles and difficulties further down the line of intermediaries. Examples of information that is not always correctly provided – often due to unintentional mistakes by the issuer – is the location of the general meeting, whether the general meeting is held in a physical or in a virtual format, the agenda for the meeting, links to where the relevant information can be found etc. There are also cases where the issuer does comply with the legal information requirements, but where this is not sufficient to allow for straight-through processing. If only the minimum required information is provided by the issuer, normally the agenda of the general meeting is excluded and has to be manually retrieved by the intermediary through the provided links or other sources. This makes it difficult for the intermediaries to forward the complete meeting information to their clients in an efficient and timely manner. The SSMA believes that holding issuers of shares to a higher standard through rules regarding the information they**

**should provide the CSD as first intermediary, would make it easier for all actors involved to enforce shareholder rights within the EU.**

Q15: For elements that are not explicitly covered by the above questions but that are still related to Chapter Ia or the Implementing Regulation, do you have any other issue that you want to raise? *[Max. 2000 characters]*

**As stated in the response to Q14, the SSMA notes that there are, and rightfully so, many rules and regulations that the intermediaries are subject to. However, the issuers of shares do not seem to be subject to corresponding requirements. This is evident based on the fact that the SSMA's members sometimes experience issuers failing to provide correct and timely information to the CSDs, causing obstacles and difficulties further down the line of intermediaries. The SSMA believes that holding issuers of shares to a higher standard by through rules regarding the information they should provide the CSD as first intermediary, would make it easier for all actors involved to enforce shareholder rights within the EU.**

## 6 Questions for intermediaries

### 6.1 Introduction

23. This section outlines questions directed at intermediaries, including CSDs. ESMA is keen to understand the views of this group of stakeholders on the new obligations stemming from the SRD2 transposition, in particular as regards their role to ensure proper communication and transmission of information and the facilitation of shareholders rights.

### 6.2 Questions

6.2.1 On shareholder identification, transmission of information and facilitation of the exercise of shareholder rights

Q59: Have you encountered any doubt or ambiguity in assessing which Member State and NCA is competent over your activities in this area?

[Not at all]

**[To a limited extent]**

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response, identifying what legislative changes could be made, if any. *[Max. 2000 characters]*

**The SSMA's members have not experienced any doubt or ambiguity; it is clear in the Swedish transposition of the directive that Sweden and the Swedish NCA *Finansinspektionen* are competent with regards to the relevant Swedish financial institutions as intermediaries. However, we have heard that there has been some doubt and ambiguity in other member states.**

Q60: How frequently do you receive shareholder identification requests when compared to the pre-SRD2 period?

**[More frequently]**

[With the same frequency as before]

[Less frequently]

Please explain and provide specific data to corroborate your response. *[Max. 2000 characters]*

[...]

Q61: Following the entry into application of the SRD2, when receiving a shareholder identification request, have you encountered obstacles in providing all the required information regarding shareholder identity to requesting issuers?

**[Y]**

[N]

[Don't know]

Please explain and provide evidence to corroborate your response. Please also clarify how long it takes you to provide the requested information and if the obstacle was related to the identification of a “beneficiary shareholder” on whose account the shares are held by a nominee shareholder in its own name. *[Max. 2000 characters]*

**The SSMA’s members have experienced some issues with regards to differences in how SRD2 has been transposed into national law, in cases where the national law goes beyond the requirements in the directive. There have been situations where an actor from another member state, by reference to that member state’s national law, requests certain information from a Swedish intermediary, for which there is no legal basis in the SRD2 as transposed into Swedish national law.**

**Some issuers make legitimate shareholder identification requests in other formats than the ISO 20022 shareholder identification disclosure messages. While this is allowed, it is nonetheless an obstacle to efficient processing of shareholder identification requests.**

Q62: With reference to the previous question, can you please describe if your response would change in connection to cross-border shareholder identification, especially when involving third-country intermediaries?

[Y, with regard to all cross-border shareholder identification]

[Y, with regard to cross-border shareholder identification involving a third-country intermediary]

[N]

**[Don’t know]**

Please explain and provide evidence to corroborate your response. *[Max. 2000 characters]*

[...]

Q63: Following the entry into application of the SRD2, is the shareholder identification request and the relevant information required (e.g., shareholder identity data, etc.) always transmitted to you in a format which allows straight-through processing within the meaning of Article 2(3) of the Implementing Regulation?

[Y]

**[N]**

[Don’t know]

Please explain and provide evidence to corroborate your response, specifying what type of standard you use. *[Max. 2000 characters]*.

**Only the ISO 20022 shareholder identification disclosure messages comply with the requirements in the SRD2 IR, as the supporting Market Standards for Shareholder Identification clearly state. Nonetheless, the SSMA’s members however still receive requests in formats which do not allow straight-through processing.**

Q64: Following the entry into application of the SRD2, do you communicate the information necessary for the exercise of shareholder rights (i.e., Article 3b) (e.g., general meeting notice, notice of participation, etc.) in a format which allows straight-through processing within the meaning of Article 2(3) of the Implementing Regulation?

[Y]

[N]

[Don't know]

Please explain and provide evidence to corroborate your response. In case your answer is *no*, please explain why and if this causes any problems in practice. *[Max. 2000 characters]*

**Whenever possible, the SSMA's members communicate using ISO 20022 messages – for general meetings – or ISO 15022 messages – for corporate action events – which allows for straight-through processing. However, the members have experienced that not all counterparties and clients are able to receive the information sent via the relevant ISO messages. Therefore, the SSMA's member are sometimes forced to communicate certain information in other formats which do not allow for straight-through processing, e.g., in order to make sure that clients which cannot support ISO 15022 or ISO 20022 messages still can receive the information.**

Q65: Following the entry into application of Article 3b, have you experienced any improvements in the downstream transmission of information to investors for the exercise of their rights along the chain of intermediaries?

[Y]

[N]

[Don't know]

Please explain and provide evidence to corroborate your response, clarifying how long it took you to provide the requested information. *[Max. 2000 characters]*

**After having put large amounts of resources into implementing these processes, the SSMA's members believe that the downstream transmission of information to investors has improved.**

Q66: Following the entry into application of the SRD2, have you experienced any changes in how frequently you receive upstream voting indications from investors at any level of the chain of intermediaries?

[Y]

[N]

[Don't know]

Please explain and provide evidence to corroborate your response. *[Max. 2000 characters]*

**The SSMA's members have not experienced any change as regards retail investors. However, there has been some increase in voting indications from institutional investors.**

Q67: What type of system(s) have you put in place to communicate with shareholders in compliance with Article 2 (4) of the Implementing Regulation?

**[A fully-electronic system]**

[A mixed electronic and paper form system]

[Other]

Please explain and provide evidence to corroborate your response. In case you put in place a fully-electronic system, please clarify if that is a proprietary system or a solution developed by a service provider. *[Max. 2000 characters]*

**The SSMA's members have in general put a lot of resources into ensuring that fully**

**electronic communication should be possible and believes that most of its members have put in place a fully-electronic system. However, due to the fact that some clients still are unable to receive the information through fully-electronic systems, the SSMA's members are, in some cases, in practice required to communicate with their clients in paper format in order to make sure that the clients can receive the information.**

Q68: Do you provide to your clients any electronic tools to facilitate the exercise of shareholder voting, including at cross-border level?

- [Y]
- [N]
- [Don't know]

Please explain and provide evidence to corroborate your response. In case your answer is yes, indicate whether they can modify their votes in your system ahead of the general meeting and when this is allowed. *[Max. 2000 characters]*

**Whenever possible, the SSMA's members provide electronic tools to facilitate the exercise of shareholder voting to their clients.**

Q69: Have you experienced difficulties in complying with the timelines envisaged by Article 9 of the Implementing Regulation (e.g., the cut-off date)?

- [Y]
- [N]
- [Don't know]

Please explain and provide evidence to corroborate your response. In case your answer is yes, please specify what difficulties. *[Max. 2000 characters]*

**The SSMA's members' experience is that it sometimes can be difficult to meet the requirement to not provide end investors with a deadline that is earlier than three business days prior to market deadline.**

Q70: Following the entry into application of the SRD2, in which way have you ensured that the costs you have charged for providing the services of Chapter Ia are:

- a) transparent;
- b) proportional;
- c) non-discriminatory.

Please explain and provide evidence to corroborate your response, clarifying also what further steps could be taken to address any difficulties encountered by intermediaries in complying with the rules and to improve compliance with Article 3d. *[1 box for each option, Max. 2000 characters]*

[...]

Q71: Do you consider that Market Standards elaborated by the industry for the application of the provisions of Chapter Ia are useful to complete the regulatory framework in this area?

- [Not at all]
- [To a limited extent]



**[To a large extent]**

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response. *[Max. 2000 characters]*

**The Market Standards are important and have been greatly appreciated by the SSMA's members, since they give practical guidance, provide detailed knowledge, examples and facilitate the processes. There is however no legal obligation to comply with the market standards, which reduces their usefulness somewhat.**