Shareholders Rights Directive 2

Background

In 2007, the European Parliament and the European Council adopted the Shareholder Rights Directive (SRD) to ensure a better protection of the exercise of rights of shareholders in listed companies. In 2017, the revised Shareholder Rights Directive (SRD II), amends the SRD and aims at encouraging long-term engagement of EU listed companies' shareholders. To achieve this long-term investment objective, the SRD II describes new obligations for EU Listed companies, Intermediaries, Institutional investors, **Asset managers**, and Proxy advisors leading to a greater transparency regarding the investment strategy, the directors' remuneration, the voting process in general meetings, and the shareholders themselves.

Scope and who does it apply to?

The Directive establishes requirements in relation to certain shareholder rights attached to voting shares of companies that have their registered office in the EU and their shares listed on a regulated market in the EU.

The Directive also applies to:

- Intermediaries used by shareholders
- Institutional investors and asset managers to the extent that they invest in in-scope shares
- Third country intermediaries when they provide services to in-scope shares

Transposition of the Directive in Luxembourg

The Luxembourg Grand Ducal bill that transposes the SRD II has the purpose of establishing requirements in relation to the exercise of certain shareholder rights attached to voting shares in relation to general meetings of companies which have their registered office in Luxembourg, and the shares of which are admitted to trading on a regulated market situated or operating within a Member State. It also establishes specific requirements to encourage shareholder engagement, in particular in the long term.

The final text of the law transposing the SRD II into Luxembourg law has been adopted by the Luxembourg Parliament on 10 July 2019. The new law has entered into force on 1 August 2019.

Shareholder engagement transparency requirements under SRD II

Scope of transparency requirements

The transparency requirements will apply to asset managers, meaning MIFID investment firms, alternative investment fund managers (**AIFMs**) (excluding small AIFMs), **UCITS management companies**, self-managed UCITS funds and CSSF-regulated insurers.

Under SRD II, the requirements apply with respect to investee companies whose shares are admitted to trading on a regulated market in the European Economic Area ("EEA").

Engagement policy

Asset managers and life insurers will be required to develop and publicly disclose their policy on shareholder engagement. The engagement policy should include the ways the firm:

- integrates shareholder engagement in its investment strategy;
- monitors investee companies, including their (i) strategy, (ii) financial and non-financial performance and risk, (iii) capital structure, (iv) social and environmental impact, and (v) corporate governance;
- conducts dialogue with investee companies;
- exercises voting rights and other rights attached to shares;
- cooperates with other shareholders;
- communicates with relevant stakeholders of the investee companies; and
- manages actual and potential conflicts of interest in relation to the firm's engagement.

The engagement policy must be disclosed on the firm's website. The requirement will apply on a 'comply or explain' basis. If a firm does not comply with one or more requirements, it must publicly disclose with a clear and reasoned explanation why they have chosen not to do so.

Firms will need to review their existing engagement policies to identify whether they comply with these requirements of SRD II. The FCA indicated in its policy statement that if firms have not updated their shareholder engagement policy by 10 June 2019, for an initial period those firms may choose to explain on their website that an updated policy is in the process of being developed or that the firm is considering whether or not to have one.

Implementation of engagement policy

Asset managers and life insurers will be required to publicly disclose how their engagement policy has been implemented, including:

- a general description of voting behavior;
- an explanation of the most significant votes they have participated in;
- an explanation of their use of proxy advisors; and
- how they have cast votes at the general meetings of companies in which they hold shares (subject to an exception for "insignificant votes").

This information is required to be made available fee of charge on the firm's website.

Transparency of Asset Managers

To help asset owners (institutional investors) evaluate whether asset managers act in their best long term interests, asset managers will be required to disclose to certain types of institutional investor various information on at least an annual basis. That information must include:

- how their investment strategy and their implementation thereof contributes to the medium to long-term performance of the assets of the institutional investor or the fund;
- certain key information, including (i) key material medium to long term risks associated with the investments, (ii) portfolio composition, (iii) turnover, (iv) turnover costs, (v) the use of proxy advisors for the purpose of engagement activities, (vi) the firm's policy on securities lending and how it is applied to fulfil its engagement activities if applicable;
- whether, and if so, how the asset manager makes investment decisions based on evaluation of medium to long term performance of the investee company including non-financial performance; and
- whether any conflicts of interest have arisen in connection with their engagement, and if so, how the asset manager has dealt with these conflicts.

Transposition by APIS ASSET MANAGEMENT

APIS ASSET MANAGEMENT (the "Company") is agreed as a fully licensed AIFM (Alternative Investment Fund Manager) pursuant to article 5 of the AIFM Law of 12 July 2013 (the « AIFM Law ») and as Management Company subject to Chapter 15 of the Law of 17 December 2010 (the "UCI Law"). The Company is subject to the CSSF supervision.

The Comapny is also authorized to perform some of the services contemplated in article 5(4) of the AIFM Law, like individual portfolio management (discretionary and advisory) or reception and transmission of orders (RTO) on financial instruments.

The Company has implemented a voting policy, an extract of which is available on the Company's website. However, the Company decided not to apply the engagement policy as described in the legal and regulatory provisions relating to SRD 2 because:

- Investments made by the Company in products in scope of SRD 2 are very intangible. Implementing an engagement policy would require a human and technological effort disproportionate to the weight attached to the voting rights of the Company;
- The Company may delegate the portfolio management to third party delegates. When the Company performs its due diligence, the Company will ensure that (i) either the delegate applies the requirements of SRD 2 in terms of engagement policy or (ii) the delegate justifies its non compliance.