

Call for Evidence on the implementation of SRD2 provisions on proxy advisors and the investment chain

Fields marked with * are mandatory.

Responding to this Call for Evidence

ESMA invites comments on all matters in this paper and in particular on the specific questions therein presented. Comments are most helpful if they:

- (1) respond to the question stated;
- (2) indicate the specific question to which the comment relates;
- (3) contain a clear rationale; and
- (4) describe any alternatives ESMA should consider.

ESMA will consider all comments received by **28 November 2022**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Open Consultations'.

Publication of responses

All contributions received will be published following the close of the Call for Evidence, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this Call for Evidence

All interested stakeholders are invited to respond to this Call for Evidence. In particular, ESMA considers this Call for Evidence will be primarily of relevance to investors, issuers whose shares are listed in Europe, intermediaries and proxy advisors. In addition to the general questions (Section 3), specific questions (Sections 4-5-6-7) are addressed to these types of stakeholders.

Other market participants, such as consultants and service providers in the investor communication and voting industry, are invited to express their views by responding to any general questions (Section 3) they would like to provide input on and in particular to the two catch-all questions (Q15 and Q25).

1. Executive Summary

Reasons for publication

As foreseen in Articles 3f(2) and 3k(2) of the Shareholder Rights Directive, as amended by Directive (EU) 2017/828 ('SRD2'), the European Securities and Markets Authority ('ESMA') is expected to support the European Commission ('EC') in the elaboration of a report assessing the implementation of Chapter Ia and Article 3j of the SRD2 across the Union. The purpose of this Call for Evidence is to gather information on how market participants perceive the appropriateness of the scope and the effectiveness of the SRD2 provisions on the identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights, as well as on transparency of proxy advisors. The responses obtained from this exercise will form the basis for ESMA's input for the elaboration of this report.

Contents

Section 2 sets out the background to ESMA's review exercise and explains the structure and the purpose of the Call for Evidence in more detail. Section 3 presents general questions intended for all stakeholders while sections 4-7 include questions targeted at specific stakeholders, *i.e.*, investors, issuers, intermediaries and proxy advisors.

Next Steps

Responses to this Call for Evidence are requested by **28 November 2022**. ESMA intends to provide the Commission with its input by **July 2023**.

2. Introduction

2.1. Background and legal mandate

The Shareholder Rights Directive, as amended by the SRD2, lays down a common regulatory framework with regard to the minimum standards for the exercise of shareholder rights in EU listed companies. The SRD2 was supposed to be transposed by Member States into their national law by 10 June 2019, with the exception of Articles 3a to 3c in Chapter Ia, which, together with the Implementing Regulation, entered into application on 3 September 2020. By facilitating the involvement of shareholders in the corporate governance of investee companies, the SRD2 aims to encourage their long-term engagement in EU companies and thereby to enhance sustainable long-term value creation in EU capital markets.

In the context of the review of the SRD2, the EC is required to submit a report assessing the implementation of Chapter Ia (Articles 3a to 3f) and Chapter Ib (Articles 3g to 3j) of the SRD2 to the European Parliament and to the Council, also involving ESMA. In particular:

- i. As per Article 3f(2) of the SRD2, the EC, in close cooperation with ESMA and the EBA, is required to submit a report on the implementation of Chapter Ia of the SRD2 providing an assessment of its effectiveness and difficulties in practical application and enforcement of the relevant Articles included

in this Chapter, while also taking into account relevant market developments at the EU and international level. In addition, the report should specifically address the appropriateness of the scope of application of this Chapter in relation to third-country intermediaries.

ii. As per Article 3k(2) of the SRD2, the EC, in close cooperation with ESMA, is required to submit a report on the implementation of Article 3j of the SRD2, providing an assessment of the effectiveness and appropriateness of the scope of application of the same provision, and taking into account relevant Union and international market developments. It is also envisaged that the report shall be accompanied, if deemed appropriate, by legislative proposals.

In September 2020, based on the recommendations from the final report of the High Level Forum on CMU [1], the EC adopted a new CMU action plan[2] which included an action aimed at facilitating investor engagement. In particular, as part of Action 12, the EC committed to “assess: (i) the possibility of introducing an EU-wide, harmonised definition of ‘shareholder’, and; (ii) if and how the rules governing the interaction between investors, intermediaries and issuers as regards the exercise of voting rights and corporate actions’ processing can be further clarified and harmonised.”[3] The CMU action plan indicated that this assessment would be carried out as part of the EC’s evaluation of the implementation of the SRD2 due to be published by Q3 2023.

On 3 October 2022, ESMA received a mandate from the Commission to provide input on the implementation of the aforementioned SRD2 provisions, also in connection to certain targeted elements relating to Action 12 of the CMU action plan. With regards to proxy advisors (*i.e.*, Article 3j), ESMA is also requested to assess the need for further regulatory requirements.

[1] *Final report of the high-level forum on the Capital Markets Union ‘A new vision for Europe’s capital markets’* https://ec.europa.eu/info/files/200610-cmu-high-level-forum-final-report_en.

[2] *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Capital markets union 2020 action plan: A capital markets union for people and businesses, COM/2020/590 24.9.2020.*

[3] *The CMU action plan further clarified that “the Commission plans to investigate in particular the following: (i) the attribution and evidence of entitlements and the record date, (ii) the confirmation of the entitlement and the reconciliation obligation, (iii) the sequence of dates and deadlines, (iv) any additional national requirements (in particular, requirements of powers of attorney to exercise voting rights), and (v) communication between issuers and central securities depositories (CSDs) as regards timing, content and format.”*

2.2. Scoping of the exercise

The implementation assessment covers a wide spectrum of topics in the SRD2, namely regarding areas such as identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights, as well as the transparency of proxy advisors. An indicative scope is provided in the table below.

<i>SRD2 provision</i>	<i>Topical Area</i>
Chapter Ia	Identification of shareholders, transmission of information and facilitation of exercise of shareholder rights
Art. 3a	Identification of shareholders
Art. 3b	Transmission of information
Art. 3c	Facilitation of the exercise of voting rights
Art. 3d	Non-discrimination, proportionality, and transparency of costs
Art. 3e	Third-country intermediaries
Article 3j	Transparency of proxy advisors
Art. 3j(1)	Transparency on code of conduct
Art. 3j(2)	Transparency of information related to the preparation of research, advice and voting recommendations
Art. 3j(3)	Transparency of conflicts of interest
Art. 3j(4)	Third-country proxy advisors

2.3. Purpose and structure of the Call for Evidence

ESMA believes that a Call for Evidence is necessary for the collection of information from market participants in order to obtain a comprehensive overview of how stakeholders perceive the appropriateness and effectiveness of the current regulatory framework, to learn about the possible difficulties encountered in the course of its application and to understand relevant market developments. The findings obtained from this exercise will allow ESMA to take action to fulfil its obligations under the SRD2, in accordance with the mandate provided by the EC. Moreover, these responses will help understand and therefore prioritise the SRD2 areas where stakeholders feel there is a need for improvement of current practices.

ESMA encourages respondents to share the practices currently put in place by market participants across different jurisdictions, as well as any difficulties they might have experienced in the practical application of SRD provisions.

In terms of structure, this Call for Evidence focuses on the six Articles that are included in the scope of this assessment, namely covering four main topical areas of the aforementioned Directive: (i) identification of shareholders; (ii) transmission of information; (iii) facilitation of exercise of shareholder rights and (iv) transparency of proxy advisors.

Section 3 (Q1-Q25) of the Call for Evidence presents a set of questions which are common to all categories of stakeholders and aimed at (i) investigating their general views on the effectiveness of the relevant SRD2 provisions, and (ii) seeking their input on certain specific issues listed under Action 12 of the CMU Action Plan.

Each type of stakeholder will be invited to answer the questions included in Section 3. Furthermore, the questionnaire includes two catch-all questions (Q15 and Q25), where all stakeholders are welcome to raise any concerns or remarks they may have.

Based on the selection of your stakeholder type under Q1, you may be invited to answer to the ensuing targeted sections designed specifically for the following groups of stakeholders:

- Section 4 (Q26-Q41): Investors (in particular, shareholders of EU listed companies);

- Section 5 (Q42-Q58): Issuers;
- Section 6 (Q59-Q71): Intermediaries;
- Section 7 (Q72-Q78): Proxy advisors.

Each section is introduced separately and provides a brief summary of the goal of such questions and the type of evidence that ESMA is seeking. The questions aim to understand the practical impact as well as supervisory implications of the relevant SRD provisions.

Additionally, to ensure that the questionnaire keeps track of market developments, certain questions also seek the views of stakeholders on the current trends in financial markets, namely on recent technological developments, environmental, social and governance ('ESG') or sustainability-related aspects and institutional investors' practices, both in the EU and at the international level.

Finally, ESMA would like to emphasize the importance of answers being factual and, to the widest possible extent, supported by clear Respondents disclosing confidential or commercially sensitive information are asked to follow the instructions regarding publication of their response as set out on in the previous sections.

2.4. Next Steps

Responses to this Call for Evidence are requested by 28 November 2022. ESMA will provide the Commission with its input by July 2023.

3. General questions

3.1. Introduction

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).

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 'other'.

3.2. Questions

3.2.1. Background

* **Q0:** Please indicate if you agree to have your answer made public.

- ☒ Yes
☐ No

* Please indicate your name and contact information.

2000 character(s) maximum

Arthur Carabia
Director ESG Policy Research
arthur.carabia@morningstar.com

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

[More than 1 option allowed]

- ☐ Individual (retail) investor;
☐ Institutional investor (such as a pension fund or an insurance undertaking);
☐ Asset manager (investing on behalf of individual clients or institutional investors);
☐ Issuer (in particular, EU companies whose shares are listed in the EU);
☐ Credit institution;
☐ Investment firm;
☐ Central securities depository - CSD;
☒ Proxy advisor (*i.e.*, a legal person providing research, advice or voting recommendations);
☐ Other.

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

2000 character(s) maximum

Sustainalytics' Stewardship Services is where ESG insights become action. Stewardship includes Engagement and voting recommendations, and it provides a framework, support and direction for investors to integrate ESG into every stage of the investment lifecycle. Engagement and voting recommendations are effective drivers for enacting broad and meaningful change.

Ongoing Stewardship Services:

Global Standards Engagement – Remediate and mitigate violations of international norms and standards:

- Manage corporate reputational risks and demonstrate investor action.
- Overlay to Global Standards Screening research.

Material Risk Engagement – Protect and promote long-term value:

- Proactively engage with high- and severe-risk companies to mitigate material ESG risk.
- Overlay to ESG Risk Ratings research.

Thematic Engagement – Proactively address systemic ESG risks and opportunities:

- Improve portfolio ESG performance and create far-reaching positive impact.
- Complements Impact Metrics research

ESG Voting Overlay – Sustainability and ESG lens to complement traditional voting policies:

- Align research, engagement and voting

Engagement 360 – Holistic approach to address compliance, risk and impact

- Maximum coverage and transparency.

* **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

* Please specify:

- | | |
|--|---------------------------------------|
| <input checked="" type="radio"/> Pan-European Organisation | <input type="radio"/> Ireland |
| <input type="radio"/> Austria | <input type="radio"/> Italy |
| <input type="radio"/> Belgium | <input type="radio"/> Latvia |
| <input type="radio"/> Bulgaria | <input type="radio"/> Lithuania |
| <input type="radio"/> Croatia | <input type="radio"/> Luxembourg |
| <input type="radio"/> Cyprus | <input type="radio"/> Malta |
| <input type="radio"/> Czechia | <input type="radio"/> Netherlands |
| <input type="radio"/> Denmark | <input type="radio"/> Poland |
| <input type="radio"/> Estonia | <input type="radio"/> Portugal |
| <input type="radio"/> Finland | <input type="radio"/> Romania |
| <input type="radio"/> France | <input type="radio"/> Slovak Republic |
| <input type="radio"/> Germany | <input type="radio"/> Slovenia |
| <input type="radio"/> Greece | <input type="radio"/> Spain |
| <input type="radio"/> Hungary | <input type="radio"/> Sweden |

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

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

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.

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

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

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

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

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

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;

- ☐ Yes
- ☐ No
- ☐ Don't know

b) Transmission of information;

- ☐ Yes
- ☐ No
- ☐ Don't know

c) Facilitation of the exercise of shareholder rights;

- ☐ Yes
- ☐ No
- ☐ Don't know

d) Costs and charges by intermediaries;

- ☐ Yes
- ☐ No
- ☐ Don't know

e) Non-EU intermediaries.

- ☐ Yes
- ☐ No
- ☐ Don't know

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);

- ☐ Yes
- ☐ No
- ☐ Don't know

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

- ☐ Yes
- ☐ No
- ☐ Don't know

c) Any additional requirements (*e.g.*, requirements of powers of attorney to exercise voting rights);

- ☐ Yes
- ☐ No
- ☐ Don't know

d) Communication between issuers and central securities depositories (CSDs);

- ☐ Yes
- ☐ No
- ☐ Don't know

e) Any other issue.

- ☐ Yes
- ☐ No
- ☐ Don't know

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 explain and provide evidence to corroborate your response in relation to:

a) Shareholder identification;

2000 character(s) maximum

b) Transmission of information;

2000 character(s) maximum

c) Facilitation of the exercise of shareholder rights;

2000 character(s) maximum

d) Costs and charges by intermediaries;

2000 character(s) maximum

e) Non-EU intermediaries.

2000 character(s) maximum

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

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);

- ☐ Yes
- ☐ No
- ☐ Don't know

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

☐

- Yes
- ☐ No
- ☐ Don't know

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

- ☐ Yes
- ☐ No
- ☐ Don't know

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

- ☐ Yes
- ☐ No
- ☐ Don't know

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?

2000 character(s) maximum

3.2.3. On proxy advisors

Q16: Is the definition of proxy advisors[4] in the SRD2 able to identify the relevant players in the shareholder voting research and advisory industry?

[4] As per Article 2g SRD, 'proxy advisor' refers to "a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies with a view to informing investors' voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights".

- ☐ Yes
- ☒ No
- ☐ Don't know

* Please explain and suggest any need for change.

2000 character(s) maximum

The SRD2's definition of proxy advisor as "a legal person providing research, advice or voting recommendations" includes a vast range of players and services in the shareholder voting research industry: from the services best provided at scale, where voting advice is bundled with vote execution, to niche services that deliver market, industry or thematic analysis and recommendations intended to overlay in-house or outsourced compliance-driven voting functions. The generality of the SRD2's definition may not support some of the important differences among service providers. Regulation based on this definition may therefore create barriers to new entrants, which may undermine industry competitiveness and, by extension, the quality of research and services across the industry.

Q17: Has the definition of competent Member State (set forth in Article 1 (2) (b) of the SRD) provided a common EU framework for proxy advisors covering EU listed companies?

- ☐ Yes
- ☐ No
- ☒ Don't know

* Please specify any doubt or ambiguity you might have had in assessing which Member State is competent over proxy advisors, providing evidence to corroborate your response and explaining what changes could be made, if any.

2000 character(s) maximum

NA

Q18: Are you aware of proxy advisors that have neither their registered office nor their head office in the Union which carry out their activities through establishments located in the Union and that may be subject to two or more Member States' legislation or no Member States' legislation at all?

- ☐ Yes, in more Member States
- ☐ Yes, in none of the Member States
- ☒ No
- ☐ Don't know

* Please explain and provide evidence to corroborate your response, specifying whether you are aware of any practical obstacles to the application of the relevant SRD2 provisions to such proxy advisors.

2000 character(s) maximum

NA

Q19: Are you aware of any entity providing proxy advisory or voting research services with regard to EU listed companies that does not fully apply and/or fully report on the application of a code of conduct in line with the provision of Article 3j(1)?

- ☐ Yes, and the entity does not sufficiently explain either why it does not apply a code of conduct or why it departs from any of its recommendations
- ☐ Yes, but the entity abides by its obligation to sufficiently explain why it does not apply a code of conduct or why it departs from any of its recommendations, and, where appropriate, discloses information of the alternative measures it has adopted
- ☒ No
- ☐ Don't know

* Please explain and provide evidence to corroborate your response, and please indicate which code(s) of conduct you think play the biggest role.

2000 character(s) maximum

NA

Q20: Do you consider that the disclosures provided by proxy advisors have reached an adequate level following the entry into application of SRD II? Please specify in relation to:

a) Fostering transparency to ensure the accuracy and reliability of the advice;

- ☐ Not at all
- ☐ To a limited extent
- ☒ To a large extent
- ☐ Fully
- ☐ No opinion

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

NA

b) Disclosing general voting policies and methodologies;

- ☐ Not at all
- ☐ To a limited extent
- ☒ To a large extent
- ☐ Fully
- ☐ No opinion

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

NA

c) Considering local market and regulatory conditions;

- ☐ Not at all
- ☐ To a limited extent
- ☒ To a large extent
- ☐ Fully
- ☐ No opinion

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

NA

d) Providing information on dialogue with issuers;

- ☐ Not at all
- ☐ To a limited extent
- ☒ To a large extent

- ☐ Fully
☐ No opinion

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

NA

e) Identifying, disclosing and managing conflicts of interest.

- ☐ Not at all
☐ To a limited extent
☒ To a large extent
☐ Fully
☐ No opinion

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

NA

Q21: Based on your experience, have you noticed improvements in the way that the proxy advisory industry is taking into account relevant ESG criteria in the preparation of their research, advice and voting recommendations or in the preparation of customised policies?

- ☒ Yes
☐ No
☐ Don't know

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

NA

Q22: Do you consider the level of harmonisation achieved under the SRD2 sufficient to ensure that investors are adequately and evenly informed about the accuracy and reliability of the activities of proxy advisors?

- ☐ Not at all
☐ To a limited extent
☐ To a large extent
☒ Fully
☐ No opinion

* Please explain and provide evidence to corroborate your response, specifying whether your answer is the same when considering proxy advisors that have neither their registered office nor their head office in the Union which carry out their activities through an establishment located in the Union.

2000 character(s) maximum

NA

Q23: In your experience, and in light of developments affecting the proxy advisory market, do you consider that the EU approach to regulation of proxy advisors, currently based on the 'comply or explain' principle, sufficiently addresses any market failures existing 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, e.g., vis-a-vis the regulatory approach taken elsewhere.

2000 character(s) maximum

NA

Q23.1: If your answer to Q23 is 'Not at all' or 'To a limited extent' or 'To a large extent', please indicate what further measures should be taken:

- ☐ Further mandatory disclosures;
- ☐ More structured disclosures, incl. in terms of harmonised presentation;
- ☐ Monitoring and complaints system and/or supervisory framework on disclosures;
- ☐ Registration/authorisation and related supervision;
- ☐ Other.

Q24: Having in mind the ESG and technological changes in progress in the voting services market as well as certain investors' tendency to internalise voting research and/or to provide clients with voting options, do you consider that the scope of application taken by the SRD2 is still adequate to cover the full relevant set of market players and services provided?

- ☐ Not at all
- ☐ To a limited extent
- ☒ To a large extent
- ☐ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

NA

Q25: For elements that are not explicitly covered by the above questions but that still concern transparency of proxy advisors, do you have any other issue that you want to raise?

2000 character(s) maximum

7. Questions for proxy advisors

7.1. Introduction

The following section sets out questions for proxy advisors, with the goal of understanding their views as regards the mandatory disclosures and other obligations imposed by the SRD.

7.2. Questions

7.2.1. On proxy advisors

Q72: Are you a signatory to a code of conduct for proxy advisors?

- ☒ Yes
- ☐ No
- ☐ Don't know

* Please explain and provide evidence to corroborate your response. In case your answer is *yes*, which code are you following and are you following it in full? Please explain whether your approach has changed after the introduction of Article 3j.

2000 character(s) maximum

Sustainalytics is a signatory of the UK Stewardship Code (the Code) per the Financial Reporting Council (FRC). Proxy advisors are required under the Proxy Advisors (Shareholders' Rights) Regulations 2019 (PA Regulations), supervised by the FCA, to publicly disclose a code of conduct and explain how they have followed it. These Regulations transpose Article 3j of the revised EU Shareholder Rights Directive (SRD II) into UK law, in line with the UK's obligations as a member of the EU.

Additionally, Sustainalytics has looked, for reference, into the applicable requirements for proxy advisors in different jurisdictions, including but not limited to US, UK and EU (including into the requirements of the Best Practice Principles for Providers of Shareholder Voting Research & Analysis 2019, although not a signatory thereof), to inform its approach. An overview of the measures implemented by Sustainalytics is available on our public website.

<https://connect.sustainalytics.com/hubfs/INV/Stewardship/ESG%20Voting%20Policy%20Overlay/Sustainalytics%20approach%20to%20industry%20requirements.pdf>

Q73: Please specify which Member State is competent for your activities according to the definition of competent Member State for proxy advisors set forth in Article 1(2)(b). Please further specify which of the following applies:

a) You have your registered office in such Member State;

- ☒ Yes
- ☐ No
- ☐ Don't know

b) Should you not have your registered office in a Member State, your head office is in such Member State;

- ☐ Yes
☐ No
☐ Don't know

c) Should none of the above be applicable, you have an establishment within such Member State.

- ☐ Yes
☐ No
☐ Don't know

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

NA

Q74: Have you been required to notify being subject to SRD2 provisions to an NCA and/or have you liaised informally with an NCA in relation to the disclosure obligations introduced by Article 3j(1) and (2)?

- ☒ Yes
☐ No
☐ Don't know

* Please explain and provide evidence to corroborate your answer. In case your answer is yes, please indicate whether you have been subject to additional provisions either via additional national legislation or guidance to comply with Article 3j.

2000 character(s) maximum

Yes, we notified being subject to the subject to SRD2 provisions to Swedish Financial Supervisory Authority.

Q75: Has your practice in the following areas been revised after the entry into force of SRD2? Please clarify which specific changes were made in the following areas:

a) Fostering transparency to ensure the accuracy and reliability of the advice;

- ☐ Not at all
☐ To a limited extent
☐ To a large extent
☒ Fully
☐ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

We offer listed companies the opportunity to comment on our research when it is finalized (at the same time we send our first report to clients). Sustainability believes it is good practice to transparently share with issuers the vote recommendations and associated research that we provide to clients who subscribe to our service.

Should the company wish to perform an internal, non-commercial review and correct any factual errors, we

offer a window during which we undertake to incorporate the company's written response (verbatim) into the Meeting Profile (research report) and re-distribute an updated version of our research to our clients. The company's feedback may or may not result in a change to our voting recommendation. Any such decision will be reflected in the revised report we recirculate to clients and the company.

We specifically request that the feedback that the company provides to us should be based on publicly available disclosures and should not include any material non-public information. We do not consider information that has not been made publicly available to all shareholders within a reasonable timeframe prior to the AGM for it to be incorporated into investors' voting decisions.

Sustainalytics also has an issuer relations team to act as a forum to receive issuer feedback regarding our research and reporting and to coordinate feedback across Sustainalytics' other research teams.

Furthermore, all our biannual and quarterly engagement and voting reports are publicly available, so companies can review and provide their thoughts about our assessment.

b) Disclosing general voting policies and methodologies;

- ☐ Not at all
- ☐ To a limited extent
- ☐ To a large extent
- ☒ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Our voting policies and research methodologies are disclosed in separate documents available via Sustainalytics' public website. Both documents are reviewed and updated on an annual basis. <https://www.sustainalytics.com/investor-solutions/stewardship-services/esg-voting-policy-overlay>

c) Considering local market and regulatory conditions;

- ☐ Not at all
- ☐ To a limited extent
- ☐ To a large extent
- ☒ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Sustainalytics is a signatory of the UK Stewardship Code (the Code) per the Financial Reporting Council (FRC). Proxy advisors are required under the Proxy Advisors (Shareholders' Rights) Regulations 2019 (PA Regulations), supervised by the FCA, to publicly disclose a code of conduct and explain how they have followed it. These Regulations transpose Article 3j of the revised EU Shareholder Rights Directive (SRD II) into UK law, in line with the UK's obligations as a member of the EU.

Additionally, Sustainalytics has looked, for reference, into the applicable requirements for proxy advisors in different jurisdictions, including but not limited to US, UK and EU (including into the requirements of the Best Practice Principles for Providers of Shareholder Voting Research & Analysis 2019, although not a signatory thereof), to inform its approach. An overview of the

We regularly review market and regulatory developments – including general practice, corporate governance codes, company law, stock exchange listing rules and securities market regulation - that impact corporate governance and ESG disclosure practices in the markets of companies on which we offer voting recommendations. We comment on the most significant developments in our bi-annual reporting to our clients.

Since we offer voting recommendations on only a select set of ballot items, our research is less impacted by specific market and regulatory conditions than services offering full ballot recommendations across a client's entire portfolio.

d) Providing information on dialogue with issuers;

- ☐ Not at all
- ☐ To a limited extent
- ☐ To a large extent
- ☒ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

We undertake dialogue with issuers in three areas:

Global Standards Engagement: An issue-driven engagement service where we engage alongside investor clients with companies that cause, contribute to or are linked to violations of international norms and standards concerning one or more Principles of the UN Global Compact and related international norms and standards (as identified by Sustainalytics' Global Standards Screening).

Material Risk Engagement: A proactive engagement service focused on companies with the greatest unmanaged financially-material ESG risks (as identified by Sustainalytics' ESG Risk Ratings).

Thematic Engagement: Proactive engagement services that focus on tackling the most challenging systemic ESG issues, from climate change to modern slavery.

e) Identifying, disclosing and managing conflicts of interest.

- ☐ Not at all
- ☐ To a limited extent
- ☒ To a large extent
- ☐ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Please see our answer to question #76 below.

Q76: Following the entry into application of Article 3j(3) of the SRD2, what new measures have you put in place for proper identification and handling of conflicts of interest and for transparency towards clients? Please explain and provide evidence to corroborate your response, indicating whether you have encountered any difficulties and if you have notified your clients more frequently of potential conflicts of interest.

2000 character(s) maximum

At product level: our research is accompanied by a conflict of interest statement that indicates whether or not Sustainalytics has a relationship with the company on which we are offering voting recommendations and which describes the exact nature of that relationship.

At firm level: Objective research is a cornerstone of our business, and we work to put in place relevant policies to structurally separate and independently manage our various research, engagement, and sales teams. Sustainalytics uses a combination of conflict management policies, procedures, organizational and technical measures to ensure that potential conflicts of interest do not become real conflicts. Our Policy for Managing Institutional Conflicts of Interest and our Policy on Managing Potential Personal Conflicts of Interest are part of a broader policy architecture, including our Morningstar Code of Ethics and Sustainalytics Key Business Principles and Practices. Ultimately, our goal is to protect the interests of clients and key stakeholders. Our robust conflict management framework specifically addresses the need for analyst independence, consistency of process, data protection and systems separation. You can find our main governance documents on our website, at www.sustainalytics.com/governance-documents.

Q77: Has your practice evolved to integrate more ESG elements in the voting recommendations or in the research you provide?

- ☒ Yes
☐ No
☐ Don't know

* Please explain and provide evidence to corroborate your response. In case the answer is *yes*, please specify what disclosures you have made in relation to this and the potential related impacts on your recommendations.

2000 character(s) maximum

Our practice is specifically focused on providing ESG-aligned voting recommendations based on a set of principles that are aligned to widely accepted norms, standards and sustainability objectives. For more information, please see Sustainalytics' ESG principles.

Sustainalytics' ESG Voting Policy Overlay complements a traditional corporate governance policy by supplementing it with ESG-aligned voting guidance. Our holistic proxy voting and engagement strategy helps our clients to connect their stewardship actions with real world impacts.

The ESG Voting Policy Overlay Service monitors AGM agendas to identify strategically significant votes with high ESG leverage for investors.

- It offers well-researched recommendations that can be combined with investors' own policies or with those of a third-party policy and provider to round-out an intentional ESG investment strategy
- Voting recommendations are grouped into two broad strategies: ESG-themed and escalation vote recommendations.
- ESG-themed recommendations are triggered by ballot measures that directly reference environmental

and social risks and opportunities covered by our ESG Principles and may be proposed by either shareholders or the company itself.

- Escalation vote recommendations are triggered by company-specific risk considerations identified via:
 - o engagement signals based on Sustainalytics' ongoing and historical engagements with companies,
 - o research signals based on Sustainalytics' ESG Risk Rating indicators mapping to priority investor themes, and
 - o net zero climate governance signals based on an examination of climate targets, climate-linked performance metrics and incentive pay practices at large fossil fuel companies.

Q78: Has your practice evolved to provide new services, in particular in the ESG sphere?

- ☒ Yes
- ☐ No
- ☐ Don't know

* Please explain and provide evidence to corroborate your response. In case the answer is yes, please explain if you identified such new (ESG) services as a source of possible conflicts of interest (*e.g.*, in the context of advisory services to issuers) and how you handled this situation, including by means of providing specific disclosures.

2000 character(s) maximum

Sustainalytics' long-standing ESG stewardship services practice added the ESG Voting Policy Overlay service in March 2021 to complement the existing ESG engagement services business.

Contact

[Contact Form](#)