

Shareholder Rights Directive (SHRD):

THE IMPACT ON SECURITIES PROCESSING.

The new EU Shareholder Rights Directive, internationally also referred to as Shareholder Rights Directive II (SHRD), will come into effect on 3 September 2020. The attempt of an alliance of European financial associations to postpone the implementation again by one year has failed.

The European Commission argues that, considering the restrictions for large meetings, it is particularly important to reach the set objectives in the near future since the shareholders can often only participate in Annual General Meetings from a distance.

RELEVANT SHRD ISSUES FOR SECURITIES PROCESSING

On 17 May 2017, the Directive (EU) 2017/828 of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement of exchange-listed companies in the European Union was issued („Shareholder Rights Directive II“). The minimum requirements for its implementation were laid down in the Commission Implementing Regulation (EU) 2018/1212. In Austria, the provisions regarding European law were mainly incorporated in the Stock Exchange Act 2018 and in the Austrian Stock Corporation Act, in Germany they were incorporated in the German Stock Corporation Law as part of the implementation act ARUG II. Therefore, different abbreviations can often be found in the industry’s language use, such as SHRD, SRD II, ARRL or ARUG II, but basically they all refer to the same thing or its national implementation.

The declared objective of the Shareholder Rights Directive II is to create an attractive environment for shareholders of exchange-listed companies in the European Union and to further improve the corporate governance of these companies. As opposed to the previous directive, the Shareholder Rights Directive II also contains provisions for certain financial market actors such as intermediaries and institutional investors, who assume an important role in the identification of shareholders as well as in securing and dispatching information. The national law at the issuer’s place of business defines which specific obligations the intermediaries must fulfil in order to facilitate exercising the shareholder rights. The identification of shareholders and the transmission of information between the shareholders and the company shall be facilitated, the monitoring of the remuneration of individual directors shall be improved, business transactions with affiliated companies or persons shall be regulated more effectively and thus, transparency shall be enhanced. In the context of securities processing and thus our product SDS GEOS, this particularly concerns the area of shareholder identification and the transfer of information about company events between exchange-listed companies and their shareholders.

COMPANY’S RIGHT TO IDENTIFY ITS SHAREHOLDERS

The exchange-listed companies have the right to identify their shareholders. The regulation allows the countries to define a threshold for the share in the respective company for the disclosure of the shareholder. In Austria, this threshold was defined with 0.5% across institutions. Correspondingly, the intermediaries are obliged to provide this information. In future, an exchange-listed company can demand information about the identity of the shareholders from their intermediary who holds the company shares. In most cases, the company will turn to the first place in the custody chain for this purpose.

Intermediaries then forward this application of the company („disclosure request“) in the custody chain. The intermediary who manages the securities account of the shareholder provides information about the shareholder’s identity. The response is usually addressed directly to the company or to a service provider address (e.g. an SRD hub) specified by the company and does therefore not have to be returned along the custody chain.

INFORMATION ABOUT COMPANY EVENTS TO SHAREHOLDERS

An exchange-traded company must provide all information regarding company events to the first and – if required – further intermediaries. This information is to be transmitted to the shareholder within the intermediary chain. A company event is a measure initiated by an issuer or a third party, which comprises the exercise of rights associated with the shares and which can influence the underlying share, e.g. payout, Annual General Meeting, but also conversion, subscription or voting rights for dividends. The Implementing Regulation distinguishes between the invitation of the shareholder to the Annual General Meeting and the notification about other company events than Annual General Meetings (reorganisations).

IMPACT ON SECURITIES PROCESSING WITH SDS GEOS

As a software provider in the post-trade service area, SDS has a substantial role in the implementation of regulations. We enable the users of our software to meet legal requirements. However, the decision on how regulations are to be interpreted and implemented must remain with our licensees and the responsible persons there. Therefore, the software must always offer leeway for user-specific decisions and it must be able to react flexibly to any requirement changes.

This makes joining the functional interpretation of the financial intermediaries and the IT implementation particularly exciting. Since requirements are often defined on a short-term basis, an iterative project strategy has proven very successful. In the process, we rely on intensive exchange with our customer community, where we also assume a very proactive role. Furthermore, we are strongly involved in the CANIG (Corporate Actions National Implementation Group) in Austria and frequently participate in various work groups (e.g. SWIFT, WM). Therefore, we do not consider ourselves a mere implementer of customer requirements but we also act in an advisory role for defining the software requirements and demonstrating the architectural options of implementation.

As part of the project regarding the SHRD, there have been numerous challenges for which, partly, new approaches had to be developed or existing approaches could be extended and adjusted accordingly.

NEW FUNCTIONS IN SDS GEOS

SDS GEOS accepts the disclosure request and checks its validity using attributes such as application code, SHRD relevance of the financial instrument, type of application, sender of application, country-specific threshold value etc. For this purpose, securities master data from WM VF1 as well as WM EDDy XML are additionally used from the reference data system SDS GEOS FI.

The information required for uniquely identifying the shareholders is not necessarily maintained in only one system at all customers. Therefore, SDS GEOS communicates online with the surrounding systems when responding to the disclosure requests. In this context, the tried-and-tested interface concept of SDS GEOS has been very useful.

The partly manual or manual dispatch of the request in the intermediary chain might also have been an option. However, SDS has decided for an integrated solution within SDS GEOS, hence the entire process (incl. monitoring and exception handling) is carried out automatically.

In practice, the securities processing procedures are more complex than one would assume at first glance. SDS GEOS performs continuous checks, for example, whether after the receipt of the enquiry there are any further intermediaries (to which the request has to be additionally dispatched) until its target date and supports the dispatch of any cancellation. The same occurs if a correction of the securities master data of a financial instrument is delivered by the data provider. Disclosure requests with a target date in the future will be kept – if necessary – until the target date and processed immediately as of the target date.

Regarding customer information for meetings and other events (advices), SDS GEOS will support the future requirements relating to the SHRD after corresponding adjustment in line with the advice and meeting processes.

According to the unanimous interpretation of the Austrian CANIG and the SDS GEOS customers, a restriction to events with selection option according to the provisions is not allowed. Information about a dividend will have to be provided in Germany in the future. Institutional customers were out of discussion here, they always have to be informed but they are rendered completely different services than retail customers in the field of advices anyway. With the implementation of the SHRD, all customers (including retail customers) are notified early and comprehensively about events which are relevant for them due to the SHRD.

It has to be mentioned here that the dispatch of advices for scheduled events as well as the new dispatch in case of cancellation-relevant changes will result in a large number of customer information whose value will not always be clear, particularly for private securities account customers. Retail customers who still receive an advice via mail can, of course, also receive information which may be outdated at the time when the customer receives it.

The community is aware of this potential problem. The motivation for these measures is, however, not primarily a service for the customer desired by the banks, but a legal requirement which has to be fulfilled. This is probably an aspect which will satisfy only a few market participants. Further new aspects are the unique event code as well as a special website for the respective meeting or the respective event. For the latter, there can be basically a separate URL in a separate language for each agenda item, which has to be considered in the reference data system SDS GEOS FI as well as in Corporate Actions processing SDS GEOS.

In order to be able to uniquely identify the shareholder within the framework of the meeting process, a customer identification is output in the securities account confirmation and on the securities account confirmation list.

According to the Implementing Regulation, technical communication shall take place in machine-readable formats, but does not restrict the formats to SWIFT or a specific ISO standard even if 20022 is recommended. In order to maintain flexibility in this context as well, SDS GEOS delivers all required data to a standard interface and additionally provides the option of rule-based conversion to industry standards. Besides the basic rules provided by SDS – also for 20022 formats in the case of disclosure requests – specialist employees have the option to adapt the rules without knowing a programming or script language on an institution-specific basis.

OPEN ISSUES

Although the production date of the Shareholder Rights Directive is already very close, there are still a number of open legal and market-related issues currently (July 2020):

In Austria, there is an ongoing discussion regarding the handling of the banking secrecy, especially concerning enquiries from abroad.

In Germany, it is still discussed whether the dispatch of events without selection options to customers is really necessary and whether it makes sense.

The reporting obligation for shareholders who only pass the reporting threshold with holdings across institutions remains to be clarified.

The EU Commission and Shareholder Identification Task Force do not always agree on the interpretation of the directive.

There is an increasing number of topics which could require the use of ISO 20022. The clarification of the details for SWIFT messages has not been completed yet, as well as the issue of the unique code of an event.

Each EU Member State has already defined its specific interpretations and implementation standards, particularly regarding issues which have been left to the individual countries on purpose or which are quite general in the SHRD. For exactly these issues, it is to be expected that they will be re-assessed or assessed differently at the time of implementation. Thus, upon implementation in SDS GEOS, we have once again decided for a high degree of flexibility through parameterisation options. We do not rely on fixed rules, which might be subject to short-term changes, and opt for flexible parameterisation, which enables our customers to „switch buttons“ conveniently and at any point in time.

Even if we have a very tight schedule until the deadline (as it is often the case with regulatory projects), we are finally well prepared for the start. At the same time, we are eager to find out whether there will be the expected positive effects for the shareholder and whether the potential adverse side effects remain moderate or whether even the legislator makes any amendments.



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