**SMPG’s questions
on Implementing Regulation 2018/1212 of the revised Shareholder Rights Directive (2007/36/EC) regarding shareholder identification ISO messages
(December 2018)**

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**Question 1:**

“Q1. The most important question for us is related to the way the response to a shareholder identification request needs to be handled and, in particular, whether the shareholder(s)’ details should be sent by the intermediary holding the information (in other word the intermediary acting as account servicer for the final investor):

1. directly to the issuer/third party appointed by the issuer, or
2. back to the issuer/third party appointed by the issuer via the custody chain (i.e. responding to the previous intermediary in the chain)

Will you or ESMA mandate one of the two model or will both models be allowed? As you can understand, the answer to this question shapes the way the response message is to be designed. As such, we would appreciate if you could address this question as a matter of priority.”

The Directive defines direct transmission to the issuer (or the third party appointed by it) as the general rule but it does not preclude that the information is sent back via the custody chain (option b). However, this latter has to be explicitly allowed by a Member State’s law and the confidentiality of the information on shareholder’s identity needs to be respected. This means that the shareholder has to give consent to the processing of his personal data to the intermediaries, which in practice may prove to be impractical. Protection of information on shareholder’s identity could also be ensured if the information goes through the custody chain in a secure (for example encrypted) way, ensuring that only the issuer has access to the data.

**Question 2:**

“Q2. Depending on the answer to [question 1], we have also identified other questions we would appreciate your guidance with:

1. Depending on the answer to question 1, if the shareholder information is provided by the intermediary who holds the information (as per option a) above), the shareholder identification type O (field 10 of part C of table 2) should only be used by an intermediary who has commingled its own assets in the same account with client assets. Is this correct?”

Yes.

**Question 3:**

“2. If the response needs to go along the custody chain (option Q1.b above):

1. Is sufficient for the intermediary in the chain to  validate the holding balance held through them
2. If not what else? Which are the commission expectation if any?
3. what if an intermediary doesn’t receive an answer (i.e. the break-down from his client)  ?
4. Are you requiring an acknowledgement to be sent to confirm receipt of the break-down?

As clarified under Question 1, the Directive does not prevent that the information flows through the custody chain provided that certain conditions are met. However, it does not set out an obligation to transmit the information along the entire custody chain.

**Question 4:**

“3. How to ensure we meet art.10 obligations (Min. Security Requirements)?

Please detail the process flow you require to comply with art 10 provision

Please clarify the check list you envisage to make sure that requestor is entitled to make the request”

The minimum security requirements in relation to the transmission, processing and storage of personal data are set out in the Directive and the Implementing Regulation. The legislation is technology neutral and it is for the market players to make sure that the technical and organisational measures and the processes they implement ensure the secure transmission of confidential data as well as the protection (and eventual deletion) of personal data.

Regarding the second question, the Regulation requires the authentication of information originated by the issuer or a relevant third party and the verification that the request or information transmitted originates from the issuer.

**Question 5:**

“4. The detailed review of the response message (table 2) has raised some questions on the details of the account details to be provided (field six and seven in part B of table 2). In particular, various options have been identified for which we would appreciate some guidance on which we should implement:

1. Option 1a – the responding intermediary sends one message for each account it has with the intermediary up the chain: this implies that field six and seven remain in sequence B
2. Option 1b – the responding intermediary sends one message for each account it  has with the intermediary up the chain: this implies that field six and seven remain in sequence B + we amend sequence C by adding the account number of the holder in the books of the responding intermediary
3. Option 2a – the responding intermediary sends only one message: this implies that we move field six and seven to sequence C
4. Option 2b – the responding intermediary sends only one message: this implies that we move field six and seven to sequence C + we amend sequence C by adding the account number of the holder in the books of the responding intermediary

The Implementing Regulation does not leave room for changing the format of the response, so field 6 and 7 has to be included in Part B. It appears to us logical that the intermediary sends one message per account with the intermediary up the chain, however this is not necessarily required by the Regulation.

As the Regulation sets out the minimum information to be transmitted, it does not preclude specifying the account number of the relevant shareholder also under sequence C, however, this may not be necessary if there are multiple reply messages sent (as in options 1a and 1b).

**Question 6:**

“5. In case of joint accounts, what reporting rules should we use? Those of the country of issuance of the shares or those of the country of residence of the shareholder?

Please clarify what you understand by joint account and, if it is an account used by more than one shareholder, what is the relevance of it with respect to reporting.

In general, the applicable law is defined by Article 1(2) of the revised Directive as being the law of the Member States where the company is registered. This law is applicable to determine the requirements for the intermediaries with respect to services provided as regards shares of that company, in particular as regards the definition of the shareholder and as regards the application of any threshold with respect to shareholder identification under Article 3a(1).

**Question 7:**

“6. Where an account is set up and declared as proprietary account identify as such from previous actor in the chain, how should be reported at table 2C10?”

This is related to Question 2.

**Question 8:**

Q3. In Table 3 for Meeting Notice, what do you mean with blank vote? Are you referring to vote withhold (US practise)?

This is relevant in jurisdictions where the company law allows shareholders to vote but leave the vote empty. Such votes will be calculated as vote cast.

**Question 9:**

Q4. In Table 3 for Meeting Notice, what do you mean with “other” vote?

In field 5 of Part E of Table 3 only those alternative voting options should be listed that are applied by the particular issuer (if any).

**Question 10:**

Q5. In Table 3 for Meeting Notice, Part F of the message is unclear. Normally, the agenda of a meeting is set at the time the meeting is announced.

The convocation of the general meeting indicates the proposed agenda. Under the Directive, shareholders, in principle, have the right to put items on the agenda and the revised agenda will have to be made available again before the general meeting.