



Frankfurt am Main,
9 May 2018

BVI's¹ position on Commission's proposal regarding implementing measures of the revised Shareholders' Rights Directive.

Since shareholder engagement is a cornerstone of sustainable finance, the fund management industry has a strong interest in improving the communication between shareholders and companies. As of today, this still proves to be a challenge in practice. While technical solutions are increasingly available, market participants involved have to be prepared to make use of such technical solutions. BVI therefore welcomes the new chapter in the revised Shareholders' Rights Directive regarding shareholder identification, transmission of information and facilitation of the exercise of shareholder rights. **We applaud the Commission for and are very supportive of the Draft Implementing Regulation.** We believe this could be an important step for clarifying the rather complex voting chain and to addressing the barriers to cross-border voting.

We would like to add the following thoughts and remarks:

- It is our understanding that, according to the draft, the issuer will be required to both confirm the receipt of votes and the recording and counting of votes. It is of utmost importance that the shareholder receives a confirmation regarding the recording and counting of votes and that this cannot be substituted by a simple confirmation of the receipt of the votes.
- In particular in cross-border situations, shareholders often do not receive the information regarding corporate events in time. It is therefore important that the deadline foreseen in Art. 9 (4) takes this into account. The possibility for the last intermediary to set a deadline earlier than three business days prior to the record date might still lead to very short time frames in which the shareholder can react – if any. We therefore would strongly support to only refer to the issuers' deadline in case of corporate events other than shareholder meetings. Clearly, for shareholder meetings, the record date has to be the relevant point in time for the deadline.
- According to the Draft, the issuer shall provide the recording and calculation of votes in the general meeting in a timely manner but no later than 15 days after the general meeting (Art. 9 (5)). The shareholder, however, might have an interest in receiving such confirmation earlier, for instance in case of a possible action for an annulment of the resolution where the national law also provides for statutory time limits or since their clients would like to receive a confirmation themselves. We therefore would strongly support introducing a shorter deadline (e.g. 3 calendar days).

As a more technical remark, the term "days" should be clarified, since otherwise this will lead to discussions whether business or calendar days are meant. We suggest using calendar days since business days always lead to fractions due to different holidays in each jurisdiction.

¹ BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Fund companies act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's over 100 members manage assets of more than 3 trillion euros for private investors, insurance companies, pension and retirement schemes, banks, churches and foundations. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.



- With respect to the table in the Annex, we notice that sometimes the term “responding intermediary” is used. We see the risk that if it is not clear which intermediary is required to respond, that none in a chain of intermediaries feels responsible for providing the information. Consequently, we would suggest clarifying the ultimate responsibility.

In practice, further problems may arise since the definition of intermediaries in Art. 2(d) SRD II does not include voting service providers which often are an integral part of the information flow between issuers and investors but do not provide services of safekeeping. While we think that the Draft Implementing Regulation cannot solve this problem, we hope that it will nevertheless have an impact on such service providers.
