Commission Implementing Regulation (EU) 2018/1212 of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1212

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies[(1)] and in particular Articles 3a(8), 3b(6) and 3c(3) thereof,

Whereas:

(1) Directive 2007/36/EC gives the right to listed companies to identify their shareholders and requires intermediaries to cooperate in that identification process. That Directive also aims to improve the communication by listed companies to their shareholders, in particular the transmission of information along the chain of intermediaries and requires intermediaries to facilitate the exercise of shareholders rights. Those rights include the right to participate and vote in general meetings, and financial rights such as the right to receive the distributions of profits or participate in other corporate events initiated by the issuer or third party.

(2) This Regulation aims to prevent the diverging implementation of the provisions of Directive 2007/36/EC, which could result in the adoption of incompatible national standards, thereby increasing the risks and costs of cross-border operations and thus jeopardising their effectiveness and efficiency, and resulting in additional burdens for intermediaries. The use of common formats of data and message structures in transmissions should enable efficient and reliable processing and interoperability between intermediaries, the issuer and its shareholders, thus ensuring the efficient functioning of Union capital markets for shares.

(3) Consistent with the scope of the empowerments and the principles of proportionality this Regulation only includes minimum requirements. Intermediaries and other market participants are encouraged to further self-regulate these formats according to the needs of different markets. They could also endeavour to further standardise the messages

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referred to in this Regulation and any other message types necessary to facilitate the exercise of shareholders rights and to adopt new technologies that could enhance transparency and trust.

(4) In order to facilitate the exercise of shareholders rights and make it more efficient, particularly across borders, the use of modern technologies in communication between issuers and their shareholders and by intermediaries, including other service providers which are deployed for these processes, should be encouraged. Any communication between intermediaries should, to the extent possible be transmitted using machine-readable and standardised formats which are interoperable between operators and which allow straight-through processing. However, intermediaries should make accessible to shareholders, who are not intermediaries, information and the means to react using widely available modalities, which enable straight-through processing by intermediaries.

(5) The minimum requirements as regards the request to disclose shareholder information and the response to be transmitted should be established to ensure a uniform, automated and smooth application of the issuer's right to know its shareholders.

(6) Without prejudice to the convocation of the general meeting, in order to ensure straight-through processing it is necessary to lay down the minimum requirements as regards the types and format of information in the standardised Meeting Notice to be transmitted, where necessary, along the chain of intermediaries to the shareholders. The aim is also to facilitate the handling of electronic voting instructions from shareholders to the issuer.

(7) This Regulation covers the different holding models for shares that exist across the Member States without favouring any particular one.

(8) The national law of the registered office of the issuer will determine which obligations concretely intermediaries need to comply with in order to facilitate the exercise of rights by the shareholders. These will include, where necessary, the obligation to confirm the entitlement of the shareholder to participate in a general meeting, and the obligation to transmit the notice of participation to the issuer. For that purpose, it is necessary to lay down minimum types of information to be included in such notice of participation.

(9) There is still a need to standardise the confirmation of entitlement to participate in a general meeting, as accurate information regarding the entitled positions may not be known to the issuer, or efficiently communicated to it, in particular because of cross-border communication. The confirmations of entitlement are communicated in divergent ways such as electronically through the chain of intermediaries, or directly by the last intermediary to the issuer, or by the last intermediary in paper or electronic format to the shareholder or client, depending on the securities holding model in the relevant market. This Regulation lays down minimum types of information to be included in confirmations or receipt of votes and the recording and counting of votes.

(10) A swift processing of transmissions within the chain of intermediaries, particularly when it consists of custodians or other operators in multiple layers and, when omnibus client accounts are used, is crucial in order to ensure that information reaches the shareholders cross-border, and that they can react within a reasonable time-frame and

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within the deadlines set by for corporate events by issuers and the intermediaries. To protect and balance out the reasonable interests of shareholders with those of the issuers and intermediaries, it is important to define the deadlines to be complied with in the transmission of information on corporate events and shareholder actions.

(11) As voluntary market standards for corporate actions processing comprising corporate events of a financial nature, such as distributions and corporate reorganisations affecting the underlying share, are for the most part applied, this Regulation only lays down the key elements and principles to be complied with in those processes.

(12) It is essential that trustworthy data is produced and that confidential data is transmitted securely. Intermediaries, issuers and issuers' service providers should have the appropriate processes in place to ensure in particular the integrity and security of those processes, which comprise personal data for the purposes defined in Directive 2007/36/EC.

(13) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee.

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) ‘issuer’ means a company which has its registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State or a third party nominated by such a company for the tasks set out in this Regulation;

(2) ‘issuer CSD’ means the central securities depository which provides the core service as defined in points 1 or 2 of Section A of the Annex to Regulation (EU) No 909/2014 of the European Parliament and of the Council[(2)] with respect to the shares traded on a regulated market;

(3) ‘corporate event’ means an action initiated by the issuer or a third party which involves the exercise of the rights flowing from the shares and which may or may not affect the underlying share, such as the distribution of profits or a general meeting;

(4) ‘intermediary’ means a person as defined in point (d) of Article 2 of Directive 2007/36/EC and third country intermediary within the meaning of Article 3e of Directive 2007/36/EC;

(5) ‘shareholder action’ means any response, instruction or other reaction by the shareholder or third party nominated by the shareholder, as the case may be under applicable law, for the purposes of exercising shareholders rights flowing from the shares, in a corporate event;

(6) ‘last intermediary’ means any intermediary who provides the securities accounts in the chain of intermediaries for the shareholder;

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(7) 'record date' means the date set by the issuer, on which the rights flowing from the shares, including the right to participate and vote in a general meeting, as well as the shareholder identity, shall be determined, based on the settled positions struck in the books of the issuer CSD or other first intermediary by book-entry at the close of its business;

(8) 'entitled position' means the position of shareholding as of the 'record date', to which the rights flowing from the shares, including the right to participate and vote in a general meeting, are attached;

(9) 'first intermediary' means the 'issuer CSD' or other intermediary nominated by the issuer, who maintains the share records of the issuer by book-entry at top tier level with respect to the shares traded on a regulated market, or holds those shares at top tier level on behalf of the shareholders of the issuer. The first intermediary can also act in the role of last intermediary;

(10) 'payment date' means the date on which the payment regarding the proceeds of a corporate event, if applicable, is due to the shareholder;

(11) 'election period' means the period during which the shareholder can choose between the available options in a corporate event;

(12) 'last participation date' means the last date on which to buy or transfer the shares with the right attached to participate in the corporate event excluding the right to participate in a general meeting;

(13) 'buyer protection deadline' means the last day and time by which a buyer who has yet to receive the underlying share of a corporate event, which includes options for the shareholder, must instruct the seller regarding the choice between the options;

(14) 'issuer deadline' means the last day and time, as determined by the issuer, to notify the issuer, third party nominated by the issuer or issuer CSD, of the shareholder actions regarding the corporate event and in the context of a corporate event initiated by a third party, it shall apply to any deadline to notify the third party or third party nominated by such third party of the shareholder actions regarding the corporate event it initiated;

(15) 'ex date' means the date as from which the shares are traded without the rights flowing from the shares including the right to participate and vote in a general meeting;

(16) 'ISIN' means the international securities identification number assigned to securities defined by ISO 6166 or compatible methodology;

(17) 'LEI' means the legal entity identifier ISO 17442 referred to in Commission Implementing Regulation (EU) No 1247/2012[(3)]

Article 2

Standardised formats, interoperability and language

1 The information referred to in Articles 3 to 8 of this Regulation shall be transmitted by the intermediaries in accordance with the standardised formats set out in the Annex, and shall include the minimum types of information and be in compliance with the requirements set out in the Annex.

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2 The information to be provided by the issuers to the intermediaries and to be transmitted along the chain of intermediaries to the shareholders shall be in a format which allows for processing in compliance with paragraph 3.

The information shall be provided by the issuer in the language in which it publishes its financial information pursuant to Directive 2004/109/EC of the European Parliament and of the Council[(4)] and, unless not justified taking into account the issuer's shareholder base, also in a language customary in the sphere of international finance.

3 The transmissions between intermediaries shall be made in electronic and machine-readable formats, which allows for interoperability and straight-through processing and which deploy internationally applied industry standards such as ISO or methodology compatible with ISO.

4 The intermediaries shall allow access to the shareholders, who are not intermediaries, to all information, as well as any modalities for shareholder actions through generally available tools and facilities, unless otherwise agreed by the shareholder. The intermediaries shall ensure that such tools and facilities allow for the processing of shareholder actions by the intermediary in accordance with paragraph 3.

Article 3

Request to disclose information regarding shareholder identity and response

1 The minimum requirements as regards the format of a request to disclose information regarding shareholder identity in accordance with Article 3a(1) of Directive 2007/36/EC shall be as set out in Table 1 of the Annex.

2 The minimum requirements as regards the format of the response by intermediaries to a request under paragraph 1 of this article shall be as set out in Table 2 of the Annex.

3 The minimum requirements referred to in paragraphs 1 and 2 shall also be applicable, to the extent necessary, to any updates and cancellations of such requests or responses.

Article 4

Transmission of meeting notice

1 The minimum requirements as regards the types and format of information to be transmitted in accordance with Article 3b(1),(2), (3) and (5) of Directive 2007/36/EC with respect to the convening of general meetings shall be as set out in Table 3 of the Annex.

2 The requirements referred to in the first paragraph shall also be applicable, to the extent necessary, to any updates and cancellations of such meeting notices.

Article 5

Confirmation of entitlement to exercise shareholders rights in a general meeting

1 For the purposes of facilitating the exercise of rights by the shareholder in a general meeting, including the right to participate and vote, as referred to in Article 3c(1) of Directive 2007/36/EC, the last intermediary shall confirm, upon request, to the shareholder or third party nominated by the shareholder, the entitled position appearing in its records. Where there is more