

New Transparency Obligations for Asset Managers under SRD II

The revised Shareholder Rights Directive (“**SRD II**”) seeks to ensure increased transparency and accountability and encourage long-term shareholder engagement between investors and the companies in which they invest. From an asset management perspective, it introduces an obligation to put in place a shareholder engagement policy (or to explain why such policy is not in place) and new reporting obligations that may apply to alternative investment fund managers (“**AIFMs**”), UCITS management companies and self-managed UCITS. SRD II was due to be transposed in EU member states by 10 June 2019. The directive has now been transposed in Ireland by the **European Union (Shareholders’ Rights) Regulations 2020** (SI 81 of 2020) (the “**Regulations**”), which came into operation on 30 March 2020.

Application of New Transparency Rules to Asset Managers

While UCITS and alternative investment funds (“**AIFs**”) are excluded from the definition of “traded PLC” in the Regulations and therefore many of the provisions of the amended SRD will not apply to investment funds, the new transparency requirements set out in SRD II will apply to:

- institutional investors, to the extent that they invest directly or through an asset manager in shares traded on a regulated market;
- asset managers, to the extent that they invest in such shares on behalf of investors; and
- proxy advisors, to the extent that they provide services to shareholders of EU listed companies.

Definition of Asset Manager

The definition of asset manager includes:

- an investment firm providing portfolio management services to investors under Markets in Financial Instruments Directive (“**MiFID II**”);
- AIFMs;
- UCITS management companies; and
- UCITS self-managed investment companies.

Institutional investors are defined as life insurance and reinsurance companies and certain pension institutions.

As most of the Irish funds will, to some extent, invest in shares traded on a regulated market, the new transparency requirements will apply to the majority of Irish funds including AIFs, UCITS and exchange traded funds (“**ETFs**”) with the exception of a small number of funds such as property funds, loan origination funds and funds investing only in bonds.

What are the New Transparency Obligations?

Shareholder Engagement Policy

The Regulations require asset managers to be transparent in how they invest and how they engage with listed companies. They will either have to develop and publicly disclose a policy on shareholder engagement or explain why they have chosen not to do so.

The shareholder engagement policy must include information on how the asset manager:

- integrates shareholder engagement in their investment strategy;
- monitors the investee company on relevant matters, including strategy, financial and non-financial performance and risk, capital structure, social and environmental impact and corporate governance;
- “conducts dialogues” or engages with investee companies;
- exercises voting rights and other rights attached to shares;
- cooperates with other shareholders;
- communicates with relevant stakeholders of the investee companies; and
- manages conflicts of interests.

On an annual basis, the asset manager must publicly disclose how their engagement policy has been implemented, including a general description of voting behaviour, an explanation of the most significant votes and the use of the services of proxy advisors. They must disclose how they have cast votes in the general meetings of companies in which they hold shares. Where an asset manager does not in a given year publicly disclose how its engagement policy has been implemented, it must publicly disclose a clear and reasoned explanation for its failure to do so.

The shareholder engagement policy and information on how it has been implemented must be available free of charge on the asset manager’s website and must be updated annually.

Reporting Obligations for Asset Managers

Where an asset manager invests on behalf of an institutional investor, whether on a discretionary basis or through an investment fund, asset managers must disclose on an annual basis, to institutional investors with which they have entered into arrangements, information on:

- how the investment strategy and its implementation complies with arrangements with the institutional investor and contributes to the medium to long-term performance of the assets of the institutional investor of the fund;
- the key material medium to long-term risks associated with investments made;
- portfolio composition, turnover and turnover costs;
- the use of proxy advisors for the purposes of engagement activities;
- securities lending policy and its impact on engagement with investee companies;
- whether investment decisions are made on the basis of evaluation of the medium to long-term performance of the investee company; and
- whether conflicts of interest have arisen, the nature of those conflicts and the manner of dealing with them.

Under SRD II, member states have the discretion to require the above information to be included in the annual report or made available by way of periodic communications to investors. The Regulations provide that, where the information disclosed is publicly available, the asset manager will not be required to provide the information to the institutional investor directly.

Next Steps

In scope asset managers will need to determine whether they will either: (a) comply with the requirements, proceed to put a shareholder engagement policy in place and prepare to meet the new annual reporting obligations; or (b) decide to opt-out and make a public non-compliance statement.