



# General Meetings Market Standards Questions and Answers

Joint Working Group on General Meetings

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## Question 1:

### *Notice of Participation*

**The definition of the Notice of Participation mentions that it includes the “number of shares or class of shares as the case may be,” that the Shareholder or End Investor hold “and their votes”. What should be understood by number of shares or class of shares and votes?**

The goal of the notice of participation is to inform the issuer whether and how the Shareholder or End Investor, as the case may be, will participate in and vote at the General Meeting. The way to process this meeting notice is described in the section 3 of GM Market Standards and the minimum data required in the table 5 of the implementing regulation (EU) 2018/1212 of 3 September 2018.

The block C of this table contains a “repeating block to be filled for each voting position” in which the 3<sup>rd</sup> field is defined as being the “number of shares voted for the agenda point for each voting position. If the voting position applies to all shares, this field is to be left unpopulated.”

This number of shares shall be understood as the number of shares as it appears in the account of the clients of last intermediary. This intermediary cannot necessarily know the corresponding expression of votes attached to these shares. This is notably the case when a share supports multiple voting rights. However, this should be known by the issuer or its agent.

The first consequence is that the intermediary shall provide the number of shares as they have been booked in the account of its client.

Furthermore, to face a potential inconsistency in the implementing rules, the recommendation is that the custodian shall systematically populate this field.

This could be misinterpreted when reading “If the voting position applies to all shares, this field is to be left unpopulated” as mention in the table 3 for the explanation of this field.

It means that the intermediary should systematically have to feed this field with the number of shares as they have been booked in the account of the client and on which the client have expressed votes.

Based on this number of shares, the issuer or its agent should then calculate the voting value of the shares that were voted depending on the provisions of national corporate law.

## Question 2:

### *Opt-out of the communication by the end-investor*

**May an intermediary choose to opt out?**

In application of SRD2 implementing rules, the Market Standards for General Meeting provide that an end investor may opt out to have access to information and modalities for shareholder actions. This “opt out” decision is clearly made by the end investor and is expressed in the relationship between the last intermediary and its client. This is not a decision made by an intermediary but only by the person holding the shares concerned in its own account.

Intermediary A being a client of another intermediary B such as a global custodian may only ask it to opt out for General Meeting services arguing that all of its clients have expressed an “opt out” decision. This situation assumes that these opt out decisions have clearly been made by shareholders, which cannot be known by intermediary B.

In this particular case this is the intermediary's responsibility to see what kind of service offers should be set up and to define the commercial arrangement accordingly addressing potential concerns.

### **How granular can be an "opt out" decision?**

SRD2 provisions and the Market Standards on General Meeting, permit for an end investor (not being an intermediary) to decide not to receive information and not to have access to modalities for shareholders actions.

This could lead to situations where a shareholder may express an opt out for certain companies but express an opt in for others.

However these situations could be not manageable for the last intermediary. This is the reason why it is up to each last intermediary to define in its commercial contract the level of granularity which is possible when a client expressed an opt out decision meaning opt out for all, or opt out for certain companies, etc.

## **Question 3:**

### *Standard 1.3*

#### **What language should be used for the narrative text of the short form meeting notice?**

The meeting notice shall be in the language of the issuer as determined by applicable company law and also in English as foreseen by ISO 2022 and IR 1212/2018 for narrative text.

## **Question 4:**

### *Standard 1.110*

#### **Why should an Issuer complete all information in the meeting announcement when table 3 (Meeting Notice) only requires limited information?**

SRD 2 places an emphasis on machine readable and straight-through-processing techniques in order to aid more efficient transmission of information.

In order to analyse the meeting agenda and decide how they wish to vote in the meeting, Shareholders (or nominated third parties) require complete information. Table 3 (Meeting Notice) requires the Issuer to announce limited information and a URL hyperlink to the website where the complete information can be found. However whilst this could be considered machine readable and straight-through-processing, it isn't efficient as each Shareholder (or their Intermediary) will be required to take additional steps to source the complete meeting data before analysis can be started. Additionally many intermediaries and institutional shareholders will have company firewall practices which will prohibit employees from visiting specific types of websites (for example gambling companies)

As such Standard 1.10 (5) requires Issuers to complete all sections of the meeting notice so receivers of the announcement are able to review and transmit the complete information without manual intervention. This in turn will help ensure the shareholder/nominated third party receives the information they need to exercise their rights and within the timeframes as set out in Art 9(2) of the Implementing Regulation

## Question 5:

### *Standard 2.3*

#### **Sequence of dates in specific cases of RD close to GM date.**

Standard 2.3 describes that the sequence of dates should be as follows: 1) Issuance of Meeting Notice, 2) Record Date, 3) Last Intermediary Deadline, 4) Issuer Deadline and 5) General Meeting with a “where possible” restriction regarding 2 and 3 sequence.

In few countries the Record Date, which is defined in commercial laws, is very close to the General Meeting date (less than 3 days).

In a chain of intermediaries, it means that the last intermediary shall collect vote shares of its client not only before the issuer deadline which is at least the day before of the General Meeting but also before the intermediary deadline of the intermediary upper in the chain, which is at least one day before the issuer deadline. In that case this latest deadline could be on the same date than this of the Record Date meaning that the last intermediary deadline is before. If more intermediaries there are between the last intermediary and the issuer, more the risk of having a last intermediary deadline before the record date is high. In such a situation, the last intermediary has no other solution than to set up his deadline on or before record date making impossible the 2 and 3 sequence.

## Question 6:

### *Standard 2.11*

#### **What is the Confirmation of Entitlement (table 4) and how can it be used?**

SRD 2 requires a Final Intermediary to send a Confirmation of Entitlement to the issuer via the next intermediary and also to an End Investor/Shareholder, as the latter has directed, when requested in an electronic and STP manner; however there is little else to explain its intention. The intended usage of the message is to assist shareholders who wish to attend a meeting physically. Whilst processes exist in markets they are generally better geared towards local investors and this could cause barriers to the exercise of shareholders rights cross-border (which is one of the problems SRD 2 is trying to alleviate).

For bearer shares existing market practices generally consist of a recognised institution, normally an intermediary to somehow confirm that a person is a shareholder e.g. by forwarding a data file or by signing a declaration which confirms the person’s name (who is attending the shareholders meeting), and the entitled position on which the person can vote and sending this to the issuer either ahead of the meeting or meant to be shown at the entrance to the general meeting. At the meeting the shareholder needs to comply with a method of identification and the meeting organiser will validate the details on the declaration and confirm the person is authorised to vote (e.g. check the passport number on the declaration matches the passport the person has with them). When the person makes a vote the entitled position on the declaration is added to the tally for that agenda point.

This process is not STP and may require the use of paper being sent via the post, a confirmation of entitlement was supposed to alleviate this. By outlining a process whereby the final shareholder could request their (final) intermediary to provide a Confirmation of Entitlement it was envisioned the person (a) either could simply take this confirmation to the meeting and the meeting organiser would use it as the declaration; thereby making the process more efficient (no need to physically sign and post documents and better deadlines for the client to advise they are attending the meeting) or (b) have the Confirmation of Entitlement be sent to the Issuer prior to the meeting thus giving the Issuer the opportunity to organise the general meeting.

However the following immediate problems currently exist which would require solving before a pan-European solution could be implemented:

1. Verification of the final intermediary: today Issuers receive a data file or a signed declaration from a large intermediary in their local market, so the declaration can easily be verified and then validated. However how could an Issuer in France verify such a data file or declaration by an Estonian local bank (and vice versa) if they have no direct connectivity? This problem is further exacerbated given any intermediary in the world (SRD 2 is meant to have a global reach) could be providing this.
2. Format of the message. the existing entitlement messages available in ISO 20022 do not differentiate between intermediaries; that is they confirm an account number and a position but they do not stipulate it's a final intermediaries confirmation. Whilst SRD II stipulates the information the Confirmation of Entitlement should contain, it doesn't discuss how the Issuer can confirm the entitlement message they are provided with is actually from the last intermediary (versus any other intermediary in the chain) and the shares confirmed in it are not being confirmed several times by different intermediaries in the custody chain. This may cause the risk of "over voting" and inaccuracy in the voting process which may lead to the resolutions being rightfully contested and rendered void. Additionally the ability to send confirmation of entitlement messages both up and down the custody chain would also require a technical change in the current swift network infrastructure.
3. Technical capability: how can final shareholders receive the Confirmation of Entitlement? Today the declaration is either sent as a data file to the issuers or as a paper given to the shareholder, but SRD 2 requires this confirmation to be electronic and machine readable. In the industry intermediaries typically communicate using swift or ISO compatible formats, but an individual is unlikely to have the capability to receive and process properly such formats.
4. Security: intermediaries and issuers are highly security conscious and practices exist to protect the data being transmitted from interference and are typically sent via closed and/or secure networks.
  - a. If the person is required to take this message to the Issuer it therefore requires the message to be downloaded from a secure network. How can Issuers be sure the contents have not been modified after it was downloaded?
  - b. How can Issuers be sure the electronic message they receive in person does not also contain unapproved software with the intent to cause harm (for example a virus added to a USB stick)?
5. Integrity: how to ensure only one message is downloaded and the entitled position is only voted once; today this is controlled by the chain of custody and physical declarations are sent only once for the position in question (with additional controls to stop that same position also being voted through the chain).

The intermediaries have reviewed the problem and are looking to an intermediate solution for the problem using the existing messages; that is the end shareholder can expect his "Confirmation of Entitlement" position evidencing the shares held by the resp. End Investor to be evidenced in and transmitted through the Notice of Participation. If the end shareholder wishes to physically attend the meeting then they can request as such and the Notice of Participation serves as the "Confirmation of Entitlement" and can either be sent through the chain of custody and communicated to the Issuer or handed to the End Investor/Shareholder for their personal use, as applicable

## Question 7:

Standard 3.9

### Inclusion of Entitlement in Notice of Participation

Standard 3.9 states that the Notice of Participation should include the Entitlement. This is of the essence for the exercising of shareholders rights since the Confirmation of Entitlement as provided for by the IR 2018/1212 is based on an electronic message type which currently seems only usable between intermediaries. Most End Investors /Shareholders do not have electronic messaging capabilities. As a pragmatic solution the Entitlement shall be included in the Notice of Participation at least until a new message type or other form to electronically evidence the Entitlement of an End Investor / Shareholder to the Issuer is developed and usable.

## Question 8:

Standard 4.1

### Format of the Receipt of Votes

Standard 4.1 confirms the principle that state of the art technology shall be used. This receipt is intended to be produced electronically and automatically as soon as the votes are lodged. The receipt is not necessary if this information is already available to the person having lodged the votes by other means, e.g. because an electronic platform has been used and this platform provides such receipt independently from the person having received the votes.

## Question 9:

Standard 4.1 & 4.2

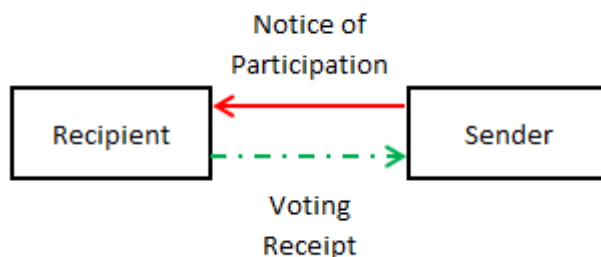
### Can you please explain how the receipt of votes process will work (table 6)?

There are two processes to be employed when a vote has been cast and are laid out in Tables 6 & 7 of the Implementing Regulation. The *Voting Receipt* (Table 6) is that the receiving party simply confirms to the sender that they have received the Notice of Participation (Table 5). This is applicable at all levels throughout the custody chain.

For example,

Once the recipient has sent the voting receipt, there is no requirement under SRD II for the recipient to cascade further voting receipt updates as the vote is sent through the chain.

For example,



1. Custodian A has 100 clients who each send a notice of participation; Global Custodian A will send a Voting Receipt to each client for the votes they have cast.
  - a. Please note the Voting Receipt can be sent in different forms, for example a message (which is ISO compliant) or a status update on a portal, and it should mirror the form of the Notice of Participation received.
2. Custodian A then amalgamates (or not) all of those votes and sends the appropriate Notice of Participation to the next Custodian. This Custodian will send a Voting Receipt to Custodian A (a unique Voting Receipt for every Notice of Participation received).
3. Custodian A does not need to send an updated Voting Receipt to his 100 clients to advise their votes have been passed through the chain. Custodian A only has to send a Voting Receipt when he initially receives a Notice of Participation (point 1).
  - a. There is of nothing which prohibits the sending of an updated message; however this is to be unilaterally agreed between the corresponding parties.

## Question 10:

*Standard 5.1 & 5.2*

**What is the recommended best practice for the End Investor/Shareholder to receive the Confirmation of Votes Cast and Counted?**

It is recommended best practice that an End Investor / Shareholder wishing to receive such Confirmation of Votes shall do so by requesting it directly from the Issuer, most preferably via the Notice of Participation. The Confirmation shall preferably be in electronic form.

## Question 11: (Updated on 15 March 2020)

*Samples of the Meeting Notices*

**How does one properly complete the meeting notice?**

### **I. SAMPLE ACCORDING TO STANDARD 1.10**

***Important notice: This meeting notice highlights some key elements of the full convocation that can be consulted on the issuer's website.***

***[to be discussed whether needed]***