

**SHAREHOLDER RIGHTS DIRECTIVE (ASSET MANAGERS AND INSURERS)
INSTRUMENT 2019**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance);
 - (d) section 247 (Trust scheme rules);
 - (e) section 248 (Scheme particulars rules);
 - (f) section 261I (Contractual scheme rules);
 - (g) section 261J (Contractual scheme particulars rules); and
 - (2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 10 June 2019.

Amendments to the Handbook

- D. The modules of the FCA Handbook listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Conduct of Business sourcebook (COBS)	Annex C

Notes

- E. In this instrument, the “notes” (indicated by “Note:”, “*Editor’s note*” or “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Shareholder Rights Directive (Asset Managers and Insurers) Instrument 2019.

By order of the Board
30 May 2019

[*Editor's note*: the text in this draft instrument takes no account of the amendments proposed in PS19/5 'Brexit Policy Statement: Feedback on CP18/28, CP18/29, CP18/34, CP18/36 and CP19/2' (February 2019).]

Annex A

Amendments to the Glossary of definitions

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>engagement policy</i>	(1) (in <i>SYSC</i> 3.4) as defined in <i>SYSC</i> 3.4.4R(1)(a). (2) (in <i>COBS</i> 2.2B) as defined in <i>COBS</i> 2.2B.5R(1)(a).
<i>proxy advisor</i>	a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies, with a view to informing investors' voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights.
<i>SRD</i>	the <i>Shareholder Rights Directive</i> .
<i>SRD asset manager</i>	(1) an <i>investment firm</i> that provides <i>portfolio management</i> services to investors; (2) an <i>AIFM</i> that is not a <i>small AIFM</i> ; or (3) the <i>operator</i> of a <i>UCITS</i> . [Note: article 1(2)(f) of <i>SRD</i>]
<i>SRD institutional investor</i>	(1) an undertaking carrying out activities of life assurance within the meaning of points (a), (b) and (c) of article 2(3) of Directive 2009/138/EC of the European Parliament and of the Council, and of reinsurance as defined in point (7) of article 13 of that Directive, provided that those activities cover life-insurance obligations, and which is not excluded pursuant to that Directive; or (2) an institution for occupational retirement provision falling within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council, in accordance with article 2 thereof, unless a Member State has chosen not to apply that Directive in whole or in parts to that institution in accordance with article 5 of that Directive.

Amend the following definition as shown. Underlining indicates new text and striking through indicates deleted text.

regulated market (1) a multilateral system operated and/or managed by a *market operator*, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in *financial instruments* - in the system and in accordance with its non-discretionary rules - in a way that results in a contract, in respect of the *financial instruments* admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of *MiFID*.

[Note: article 4(1)(21) *MiFID*]

- (2) (in addition, in ~~*INSPRU*~~ and ~~*IPRU(INS)*~~ *INSPRU*, *IPRU(INS)*, *SYSC 3.4* and *COBS 2.2B* only) a market situated outside the *EEA States* which is characterised by the fact that:
- (a) it meets comparable requirements to those set out in (1); and
 - (b) the *financial instruments* dealt in are of a quality comparable to those in a regulated market in the United Kingdom.

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

Insert the following new section after SYSC 3.3 (Additional requirements for insurance distribution). The text is not underlined.

3.4 SRD requirements

Application

- 3.4.1 R This section applies to:
- (a) a *UK insurer*; and
 - (b) a *UK pure reinsurer*,
- doing *long-term insurance business*.
- 3.4.2 R The *rules* in this section apply to the extent that a *firm* is investing (or has invested), directly or through an *SRD asset manager*, in *shares* traded on a *regulated market*.
- 3.4.3 G The defined term *regulated market* has an extended meaning for the purposes of this section. The definition includes certain markets situated outside the *EEA*.

Engagement policy and disclosure of information

- 3.4.4 R A *firm* must either:
- (1) (a) develop and publicly disclose an *engagement policy* that meets the requirements of SYSC 3.4.5R (an “engagement policy”); and
 - (b) publicly disclose on an annual basis how its *engagement policy* has been implemented, in a way that meets the requirements of SYSC 3.4.6R; or
 - (2) publicly disclose a clear and reasoned explanation of why it has chosen not to comply with any of the requirements imposed by (1).

[**Note:** article 3g(1) and (1)(a) of *SRD*]

- 3.4.5 R The *engagement policy* must describe how the *firm*:
- (1) integrates shareholder engagement in its investment strategy;
 - (2) monitors investee companies on relevant matters, including:

- (a) strategy;
 - (b) financial and non-financial performance and risk;
 - (c) capital structure; and
 - (d) social and environmental impact and corporate governance;
- (3) conducts dialogues with investee companies;
 - (4) exercises voting rights and other rights attached to *shares*;
 - (5) cooperates with other shareholders;
 - (6) communicates with relevant stakeholders of the investee companies; and
 - (7) manages actual and potential conflicts of interests in relation to the *firm's* engagement.

[**Note:** article 3g(1)(a) of *SRD*]

- 3.4.6 R (1) The annual disclosure must include a general description of voting behaviour, an explanation of the most significant votes and the use of the services of *proxy advisors*.
- (2) (a) Subject to (b), a *firm* must publicly disclose how it has cast votes in the general meetings of companies in which it holds *shares*.
- (b) A *firm* is not required to disclose votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.

[**Note:** article 3g(1)(b) of *SRD*]

- 3.4.7 R (1) The applicable disclosures or information referred to in *SYSC* 3.4.4R to *SYSC* 3.4.6R must be made available free of charge on the *firm's* website.
- (2) Where an *SRD asset manager* implements the engagement policy, including voting, on behalf of a *firm*, the *firm* must make a reference as to where such voting information has been published by the *SRD asset manager*.

[**Note:** article 3g(2) of *SRD*]

Investment strategy and arrangements with SRD asset managers

- 3.4.8 R A *firm* must disclose publicly how the main elements of its equity investment strategy are consistent with the profile and duration of its liabilities, in particular long-term liabilities, and how they contribute to the

medium- to long-term performance of its assets.

[**Note:** article 3h(1) of *SRD*]

- 3.4.9 R (1) Where an *SRD asset manager* invests on behalf of a *firm*, whether on a discretionary client-by-client basis or through a collective investment undertaking, the *firm* must publicly disclose the following information regarding its arrangement with the *SRD asset manager*:
- (a) how the arrangement with the *SRD asset manager* incentivises the *SRD asset manager* to align its investment strategy and decisions with the profile and duration of the liabilities of the *firm*, in particular long-term liabilities;
 - (b) how that arrangement incentivises the *SRD asset manager* to make investment decisions based on assessments of medium- to long-term financial and non-financial performance of the investee company, and to engage with investee companies in order to improve their performance in the medium- to long-term;
 - (c) how the method and time horizon of the evaluation of the *SRD asset manager's* performance and the remuneration for asset management services are in line with the profile and duration of the liabilities of the *firm*, in particular its long-term liabilities, taking into account its absolute long-term performance;
 - (d) how the *firm* monitors portfolio turnover costs incurred by the *SRD asset manager* and how it defines and monitors a targeted portfolio turnover or turnover range; and
 - (e) the duration of the arrangement with the *SRD asset manager*.
- (2) Where the arrangement with the *SRD asset manager* does not contain one or more such elements, the *firm* must give a clear and reasoned explanation why this is the case.

[**Note:** article 3h(2) of *SRD*]

- 3.4.10 R The information referred to in SYSC 3.4.8R and SYSC 3.4.9R must:
- (1) be made available, free of charge, on the *firm's* website; and
 - (2) be updated annually, unless there is no material change.

[**Note:** article 3h(3), first paragraph of *SRD*]

Amend the following as shown. Underlining indicates new text.

...

10 Conflicts of interest

...

10.1 Application

...

Requirements only apply if a service is provided

10.1.2 ...

SRD requirements

10.1.2A R The requirements in this section apply to an *SRD asset manager* with regard to its engagement activities covered by the *SRD*.

[Note: article 3g(3) of *SRD*]

...

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

Amend the following as shown. Underlining indicates new text.

1 Application and purpose

...

1 Annex Application (see COBS 1.1.2R)

1

...

Part 3: Guidance

...		
10.		AIFMD: effect on territorial scope
...		
11.		<u>SRD: effect on territorial scope</u>
<u>11.</u> <u>1</u>	<u>G</u>	<u>SRD includes a number of requirements on SRD asset managers. These requirements are implemented in COBS 2.2B.</u>
<u>11.</u> <u>2</u>	<u>G</u>	<u>SRD provides that the EEA State competent to regulate these requirements is the Home State as defined in the applicable sector-specific legislation. COBS 2.2B therefore applies where a UK firm carries on activities from an establishment in the United Kingdom or another EEA State, as set out in COBS 2.2B.4R.</u>
		[Note: article 1(2)(a) of SRD]

Insert the following new section after COBS 2.2A (Information disclosure before providing services (MiFID and insurance distribution provisions)). The text is not underlined.

2.2B SRD requirements

Application: Who?

2.2B.1 R This section applies to:

- (1) a UK MiFID investment firm that provides portfolio management

- services to investors;
- (2) a *third country investment firm* that provides *portfolio management* services to investors;
 - (3) a *UK UCITS management company*;
 - (4) an *ICVC* that is a *UCITS scheme* without a separate *management company*; and
 - (5) a *full-scope UK AIFM*.

[**Note:** article 2(f) of *SRD*]

Application: What?

- 2.2B.2 R This section applies to the extent that the *firm* is investing (or has invested) on behalf of investors in *shares* traded on a *regulated market*.
- 2.2B.3 G The defined term *regulated market* has an extended meaning for the purposes of this section. The definition includes certain markets situated outside the *EEA*.

Application: Where?

- 2.2B.4 R (1) This section applies in relation to activities carried on by a *firm* from an establishment in the *United Kingdom*.
- (2) This section also applies in relation to activities carried on by a *UK firm* from an establishment in another *EEA State*.

Engagement policy and disclosure of information

- 2.2B.5 R A *firm* must either:
 - (1) (a) develop and publicly disclose an *engagement policy* that meets the requirements of *COBS 2.2B.6R* (an “engagement policy”); and
 - (b) publicly disclose on an annual basis how its *engagement policy* has been implemented in a way that meets the requirements of *COBS 2.2B.7R*; or
 - (2) publicly disclose a clear and reasoned explanation of why it has chosen not to comply with any of the requirements imposed by (1).

[**Note:** article 3g(1) and (1)(a) of *SRD*]

- 2.2B.6 R The *engagement policy* must describe how the *firm*:
 - (1) integrates shareholder engagement in its investment strategy:

- (2) monitors investee companies on relevant matters, including:
 - (a) strategy;
 - (b) financial and non-financial performance and risk;
 - (c) capital structure; and
 - (d) social and environmental impact and corporate governance;
- (3) conducts dialogues with investee companies;
- (4) exercises voting rights and other rights attached to *shares*;
- (5) cooperates with other shareholders;
- (6) communicates with relevant stakeholders of the investee companies; and
- (7) manages actual and potential conflicts of interests in relation to the *firm's* engagement.

[**Note:** article 3g(1)(a) of *SRD*]

- 2.2B.7 R (1) The annual disclosure must include a general description of voting behaviour, an explanation of the most significant votes and reporting on the use of the services of *proxy advisors*.
- (2) (a) Subject to (b), a *firm* must publicly disclose how it has cast votes in the general meetings of companies in which it holds *shares*.
- (b) A *firm* is not required to disclose votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.

[**Note:** article 3g(1)(b) of *SRD*]

- 2.2B.8 R The applicable disclosures or information referred to in *COBS* 2.2B.5R to *COBS* 2.2B.7R must be made available free of charge on the *firm's* website.

[**Note:** article 3g(2) of *SRD*]

Transparency of asset managers

- 2.2B.9 R (1) This *rule* applies where a *firm* invests on behalf of an *SRD institutional investor*, whether on a discretionary client-by-client basis or through a collective investment undertaking.
- (2) The *firm* must disclose to the relevant *SRD institutional investor*, on an annual basis, how its investment strategy and the implementation

of it:

- (a) complies with the arrangement referred to in (1); and
 - (b) contributes to the medium- to long-term performance of the assets of the *SRD institutional investor* or of the *fund*.
- (3) The disclosure must include reporting on:
- (a) the key material medium- to long-term risks associated with the investments;
 - (b) portfolio composition;
 - (c) turnover and turnover costs;
 - (d) the use of *proxy advisors* for the purpose of engagement activities;
 - (e) the *firm's* policy on securities lending and how that policy is applied to supports the *firm's* engagement activities if applicable, particularly at the time of the general meeting of the investee companies;
 - (f) whether and, if so, how, the *firm* makes investment decisions based on evaluation of medium- to long-term performance of an investee company, including non-financial performance; and
 - (g) whether and, if so, which conflicts of interests have arisen in connection with engagement activities and how the *firm* has dealt with these conflicts.

[**Note:** article 3i(1) of *SRD*]

2.2B.10 G A *firm* may provide the disclosure in *COBS 2.2B.9R* by making the relevant information publicly available.

Amend the following as shown. Underlining indicates new text.

18 Specialist regimes

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18.5A Full-scope UK AIFMs and incoming EEA AIFM branches

...

Application or modification of general *COBS* rules

18.5A.3 R *A firm when it is carrying on AIFM investment management functions:*

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	Full-scope UK AIFM	Incoming EEA AIFM branch
...		
2.1.4R (AIFMs best interest rule)
<u>2.2B (SRD requirements)</u>	<u>Applies</u>	<u>Does not apply</u>
...		

...

18.5B UCITS management companies

...

Application or modification of general COBS rules

18.5B.2 R *A firm when it is carrying on scheme management activity:*

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	UCITS management company
...	
2.1.1 (The client's best interests rule)	Applies
<u>2.2B (SRD requirements)</u>	<u>Applies</u>
...	

...

18.9 ICVCs

18.9.1 R ...

(3) COBS 2.2B (SRD requirements) applies to an ICVC that is a UCITS scheme without a separate management company.

...