

To:  
Finance Norway, c/o CEO Kari Olrud Moen  
The Norwegian Securities Dealers Association, c/o CEO Sindre Støer  
The Norwegian Mutual Funds Association, c/o CEO Bernt S. Zakariassen

Your ref:

Our ref:

Date: 9 March 2023

## **Consultation letter – amendments to the Registration Rules – implementation of SRDII in the Norwegian market**

### **1. Introduction**

Verdipapirsentralen ASA (*Euronext Securities Oslo* – ES-OSL) hereby invites you to respond to this consultation concerning amendments to ES-OSL's *Rules for Registration Activities and related ancillary services* (the Registration Rules) as a result of the implementation of Directive (EU) 2017/828 of the European Parliament and of the Council (Shareholder Rights Directive II, SRDII) in the Norwegian market.

First, this consultation letter describes some of the legislative and regulatory changes made in Norwegian law as a result of the implementation of SRDII. The legislative and regulatory changes outlined is a summary of the changes, and reflects ES-OSL understanding of the changes. It shall not be considered as a complete description of the changes. Account Operators, issuers, nominees and other parties each have an independent responsibility to familiarise themselves with the changes and assess the consequences thereof. ES-OSL has chosen to describe some of the legislative changes because the amendments proposed in the Registration Rules are closely related to hereto, and further ES-OSL believes that the description is supportive for the understanding of the content of this consultation letter. Secondly, the proposed changes to the Registration Rules are explained, followed by a short description of the functionality/service being offered.

The implementation of SRDII into Norwegian law entails some new obligations for ES-OSL, for the Issuer Account Operator (IAO) and the Account Operator Investor (AOI), respectively, as well as for the nominee with a nominee account in ES-OSL.

The Registration Rules including the proposed amendments are attached. Please note that any response you may have to this consultation letter should be addressed to the proposed amendments only.

You are invited to respond to this consultation letter by March 30<sup>th</sup>, 2023.

### **2. Background**

Directive (EU) 2017/828 of the European Parliament and of the Council amends Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement. SRDII was adopted on May 17, 2017.

The Norwegian Authorities have implemented changes to the Norwegian law on several occasions as a result of SRDII. Latest, changes as a result of the implementation of SRDII have been made in the act

on amendments to the company legislation, etc. with the title “*Openness about ownership and participation at the general meeting*”<sup>1</sup>. According to this act, amendments are made to the Public Limited Liability Companies Act, the Private Limited Liability Companies Act, and the Norwegian Central Securities Depository Act.

In addition, the Ministry of Finance has issued a level 2 regulation dated 2022-09-01 no. 1523 relating to intermediaries covered by section 4-5 of the Norwegian Central Securities Depository Act.

The level 2 regulation also implements the European Commission Implementing Regulation (EU) 2018/1212 of 3 September 2018 specifying minimum requirements for the implementation of the provisions of Directive 2007/36/EC of the European Parliament and Council as regards shareholder identification, transmission of information and facilitation of exercising shareholders rights.

The aforementioned legislative amendments as well as the level 2 regulation of the Norwegian Central Securities Depository Act enter into force on 1 July 2023.

### **3. Overview of the amendments to legislation and level 2 regulation**

The latest implementation of SRDII addresses the following three topics:

- Identification of shareholders, holding shares in a nominee account
- Transfer of information to shareholders, holding shares in a nominee account
- Facilitation of the exercise of shareholder rights for shareholders, holding shares in a nominee account.

One of the objectives of SRDII is to facilitate the exercise of shareholder rights by improving the transfer of information throughout the chain of intermediaries. Information must be communicated throughout the chain from the issuers to the shareholders holding shares in a nominee account. In some cases, the information must be responded to and information must be returned to the issuer throughout the chain of intermediaries.

The issuer's right to identify owners of nominee held shares registered in a CSD has existed in Norwegian law for several years. Regardless, due to SRDII changes have been made in the Public Limited Liability Companies Act that are of importance to nominees and intermediaries. This relates, among other things, to the information a nominee must record about the owners of nominee held shares, correction of shareholder information, and the nominee's obligation of provide information to the issuer or a public authority. In this regard, it should be emphasised that SRDII applies to companies listed on a regulated market, while Section 4-10 of the Public Limited Liability Companies Act also applies to unlisted public limited companies and private limited liability companies with shareholders holding shares in a nominee account.

Section 1-8 of the Public Limited Liability Companies Act introduces a new provision requiring notifications from issuers to owners of nominee held shares to be sent to the nominee. In the same act, changes are also made to the rules relating to participation in the general meeting for shareholders of shares recorded on a nominee account. Amendments are also made to the Private Limited Liability Companies Act, which entails that relevant provisions from the Public Limited Liability Companies Act regarding shares held on a nominee account apply *mutatis mutandis*.

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<sup>1</sup> legal reference: LOV-2021-06-11-84

Section 4-5 of the Norwegian Central Securities Depository Act introduces a new provision on intermediaries. The provision sets out a duty for intermediaries to communicate information between shareholders and issuers. The intermediaries' duties and responsibilities are further regulated in the new level 2 regulation on intermediaries covered by section 4-5 of the Norwegian Central Securities Depository Act. This includes new rules in respect of content, formats, deadlines, etc.

Until now, the term "intermediary" has not been used in the Norwegian Central Securities Depository Act. Therefore, it is important to clarify which undertakings are subject to the new obligations assigned to intermediaries.

Section 4-5 of the Norwegian Central Securities Depository Act defines an intermediary as *“a person who provides services in the form of holding shares, managing shares or maintaining securities accounts on behalf of shareholders or others” [office translation].*

Both ES-OSL in the role of a CSD and a nominee maintaining nominee accounts in ES-OSL are to be regarded as intermediaries under the provision. Also, ES-OSL finds that the activities of an AOI are covered by the provision. It is an AOI who has the contractual agreement and customer relationship with an account holder, both in relation to individual and nominee accounts. Furthermore, it is the AOI who opens a VPS account and it is the AOI who maintain and updates the personal details/reference data of the investor on a VPS account.

ES-OSL already offers the possibility of direct communication between the issuer and shareholders with shares on an individual account. Such communication through ES-OSL's technical systems is facilitated by the Issuer Account Operator. ES-OSL cannot see that the implementation of SRDII in Norway means that this form of communication cannot be continued. This has the practical consequence that Account Operator Investor as intermediary will not have to facilitate communication that takes place in this way.

ES-OSL regards the following market participants as "intermediaries" pursuant to section 4-5 of the Norwegian Central Securities Depository Act:

- ES-OSL
- Account Operator Investors
- Nominee, i.e. an account holder who has opened one or more nominee accounts in ES-OSL

For further details on the amendments to the acts and level 2 regulation relating to the implementation of SRDII reference is made to the amendment act mentioned above and Prop. 136 LS (2020–2021) on amendments to the Companies Act, etc. (transparency about ownership and participation at the general meeting).

#### **4. Briefly about the flow of information in the chain**

As mentioned above, a key element in the implementation of SRDII is that information must be communicated throughout the chain. Be it from the issuer to shareholders holding shares on a nominee account, or, if relevant, that other information is communicated from the shareholder back to the issuer.

The following participants will be part of the value chain around ES-OSL:

Issuer → IAO → ES-OSL → AOI → Nominee holding nominee account(s) in ES-OSL

The issuer will normally start the process by providing information, e.g. by a request to identify owners or by providing information of an upcoming general meeting.

The issuer must provide this information to the first intermediary in the chain, which would normally be ES-OSL. ES-OSL has organised its interaction/communication with the issuer by the use of an IAO acting on behalf of ES-OSL. The issuer shall thus provide this information to its IAO who receives the information on behalf of ES-OSL.

Hereafter ES-OSL communicates the information to the next intermediary in the chain. Due to ES-OSL's business model this will be AOI's maintaining nominee accounts. The AOI communicates the information to its customers, namely nominees who hold nominee account(s) in ES-OSL. The nominee then conveys this information to the shareholders it has as customers. In a nominee chain there may be several links of nominees. If a nominee has another nominee as a customer, the information is communicated to that person. As explained in chapter 3 above Issuer Account Operator will on behalf of ES-OSL convey information directly to shareholders holding an individual account in ES-OSL.

#### **5. Brief description of functionality resulting from the implementation of SRDII**

ES-OSL has partly used existing systems and have developed tools that enable a uniform and standardized way of disseminating information. By using these tools, the issuer may request identification of owners of nominee registered shares and provide information about corporate action or general meetings to the IAO. The IAO will be able to register this information in ES-OSL's system whereby which the information will be structured and made available via messages.

ES-OSL's system will - by using communication channels that enable information exchange through standardized formats such as ISO 15022 and ISO 20022 - send messages to the AOI for nominee accounts. In order to ensure efficient processing in terms of both information requirements and interoperability, the content of the message will use selected global market practices for such information exchange. This will enable direct processing in the chain of intermediaries.

#### **6. The proposed amendments to the Registration Rules**

ES-OSL proposes new provisions in the Registration Rules entering into effect as from the date the implementation of SRDII in Norwegian law enters into force.

The amendments to the Registration Rules relate to obligations for ES-OSL, issuer, IAO, AOI and a nominee who holds nominee account(s) in ES-OSL. In addition, some new definitions are introduced that are necessary for the implementation of SRDII.

ES-OSL, AOI and nominees with nominee account(s) in ES-OSL are all covered by the obligations for intermediaries as set out in the Norwegian Central Securities Depository Act and the level 2 regulation. The issuer is subject to obligations set out in the Public Limited Liability Companies Act. Several of the provisions included in the Registration Rules refer to existing statutory or regulatory obligations.

Some of the amendments in the Registration Rules may be considered as not being necessary in legal terms, as the obligations already follow from the acts and level 2 regulation. Regardless, ES-OSL has chosen to include the provisions in the Registration Rules in order to, among other things, clarify these obligations and to obtain a more coherent regulation within this area.

Changes are proposed in four chapters of the Registration Rules. Two changes are proposed in Chapter 2 of the Registration Rules. New provisions are added under section 2.2.5 on the Account Operator Issuer. In Chapter 2.3 on the establishment and registrations on VPS accounts, a new provision regarding Account Operator Investor's opening of nominee accounts is proposed. In Chapter 3 of the Registration Rules a new Chapter 3.6 on the implementation of SRDII and SRDII-messages is proposed. In Chapter 4 of the Registration Rules, a new provision is proposed under Chapter 4.2.5 on Issuer Accounts Operator Issuer for link instruments derived from another CSD.

As mentioned above, it is proposed that the new provisions are included in Chapter 2, in Chapter 3 and partly in Chapter 4. Chapter 3 of the Registration Rules regulates ancillary services that improve the security, efficiency and transparency of securities markets and are not considered as core services under the CSDR. As mentioned above, a key element in the implementation of SRDII is that information must be communicated throughout the chain from the issuer to shareholders holding shares in the nominee account and, if relevant, that other information is communicated back to the issuer. Such activities fall under CSDR's definition of ancillary services<sup>2</sup>. It is thus natural to regulate the main part of the new provisions in Chapter 3 of the Registration Rules.

The provisions proposed in Chapter 2 of the Registration Rules relates to the traditional Account Operator activities. This is explained in more detail below. Similarly, the provision in chapter 4 relates to the activity carried out as an Issuer Account Operator for link instruments derived from another CSD, and belongs in chapter 4.

## **6.1 New provisions in the Registration Rules**

### **6.1.1 New provisions in Chapter 2.2.5 of the Registration Rules**

A new subchapter 2.2.5.8 is proposed with the heading "*Closer on the implementation of SRDII*". This includes one provision on the issuer's obligations and one provision on the IAO's obligations.

As mentioned above, it is usually the issuer that initiates the process by providing information, e.g. through a request for identification of owners or providing information about an upcoming general meeting or another corporate action event. Subchapter 2.2.5.8.1 proposes a provision on the issuer's obligations in this respect. This provision rely on the issuer's obligations and rights contained in the company law, including communication of corporate actions and the right to identify owners on nominee accounts. In order to start the information in the value chain around ES-OSL, the issuer must forward a request or provide information to the IAO. ES-OSL's business model is based on the involvement of Account Operators where the IAO on behalf of ES-OSL has the direct relation to/communication with the issuer. The IAO's shall assist the issuer in connection with matters that arise due to the securities that are registered in the VPS Register, including assistance in connection with corporate actions. The IAO receives such notifications from the issuer on behalf of ES-OSL. The provisions in Chapter 2.2.5 also apply to primary recorded shares from other EEA jurisdictions.

Subchapter 2.2.5.8.2 proposes a provision stipulating that the IAO shall enter the information or request from the issuer in ES-OSL's technical systems, which will then form basis for the SRDII message that will be communicated further down the chain.

As a result of the IAO acting on behalf of ES-OSL in the role of CSD in relation to the issuer, ES-OSL believes it is necessary to set out the obligations of both the issuer and the IAO in relation to SRDII as new provisions in Chapter 2 of the Registration Rules.

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<sup>2</sup> Annex to CSDR, Section B, no. 2 (b) on supporting the processing of corporate actions, general meetings, etc.

Reference is made to the proposed new subchapter 2.2.5.8 of the Registration Rules.

#### 6.1.2 New provisions in Chapter 3.6 of the Registration Rules

As discussed under the description of legislative and regulatory changes, ES-OSL considers that ES-OSL, as a CSD, the Account Operator Investor and the nominee that holds a nominee account in ES-OSL, are all within the scope of “intermediaries” under the Norwegian Central Securities Depository Act. As a consequence of the possibility of direct communication between the issuer and shareholders with shares on an individual account being continued after the implementation of SRDII, only Account Operator Investors who maintain nominee accounts will be subject to new obligations under the Registration Rules.

The three provisions in the Registration Rules Chapter 3.6.1 to 3.6.3 addresses the obligations of the various intermediaries. The basic obligation is to communicate information and requests, and do so in accordance with the requirements for content, formats and deadlines that follow from legislation and the level 2 regulation. The provision in Chapter 3.6 clarifies the obligations according to legislation.

Reference is made to the proposal for a new Chapter 3.6 of the Registration Rules.

#### 6.1.3 New rules in Chapter 2.3 of the Registration Rules

It is proposed to include a new Subchapter 2.3.2.4.3 with the heading "Account Operator Investor's obligation for nominee account where SRDII-shares may be held".

As background information, ES-OSL has approximately 130 participants who act as AOI. Only a small proportion of these 130 participants currently maintain a nominee account and thus fall under the obligations of an intermediary pursuant to the rules in Chapter 3.6 of the Registration Rules.

To ensure that ES-OSL has an overview of which Account Operators maintain nominee accounts on which SRDII shares are registered, an obligation is introduced for the Account Operator to notify ES-OSL before the first nominee account is opened. ES-OSL can thus guide the Account Operator and ensure that the Account Operator has the necessary infrastructure available to process SRDII-messages.

Reference is made to the proposal for a new subchapter 2.3.2.4.3 of the Registration Rules.

#### 6.1.4 Changes in Chapter 4.2.5 – Issuer Account Operator's ongoing responsibility for link instruments

SRDII messages must also be processed for CSD-link instruments. In Chapter 4.2.5, a rule is thus proposed that the Issuer Account Operator must initiate SRDII messages in ES-OSL's technical systems as a basis for the information that shall be transmitted.

#### 6.1.5 New definitions in the Registration Rules and the Account Operator's use of a third-party provider

Three new definitions are being introduced in the Registration Rules necessary for the implementation of SRDII. The definitions are:

- SRDII
- SRDII share
- SRDII messages

Reference is made to the definition chapter in the Registration Rules, where these definitions are further described.

Subchapter 1.3.2.2 of the Registration Rules regulates an Account Operator's use of a data centre or third-party provider to manage communication or the technical connection to ES-OSL. No amendments are proposed to these provisions, however, this provision will apply where an Account Operator would like to engage a data centre or third-party provider to perform SRDII-messages on its behalf.

## **7. Process**

The Registration Rules specify that in the event the Registration Rules are amended, ES-OSL shall notify interest organisations that represent a not insignificant proportion of Account Operators.

By this consultation letter ES-OSL notifies to Finance Norway, the Norwegian Securities Dealers Association and the Norwegian Mutual Funds Association. The proposed changes to the Registration Rules are also published on ES-OSL's customer pages, and the contact person for each Account Operator will be informed of the proposed changes.

When ES-OSL introduces changes the minimum consultation period is three weeks. The changes in the Norwegian law as a result of the implementation of SRDII, will enter into force on 1 July 2023. The amendments to the Registration Rules must enter into force from the same date. Due to the short time ahead of this date, where also the approval of the Registration Rules shall obtained from Finanstilsynet, ES-OSL has decided to use the minimum period of the consultation period. The scope of the actual amendments in the Registration Rules also implies that 3 weeks is considered a reasonable consultation period.

Responses to this consultation must be submitted by email to [osl-clientsupprt@euronext.com](mailto:osl-clientsupprt@euronext.com), copying in [vpslegal@euronext.com](mailto:vpslegal@euronext.com).

Best regards,  
Verdipapirsentralen ASA



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cc: the NFSA