

Feedback Statement issued further to  
Industry Responses to MFSA  
Consultation Document on the  
Encouragement of Long-Term  
Shareholder Engagement

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## 1.0 Introduction

On the 17th April 2019, the MFSA issued a Consultation Document proposing a new Annex III to Chapter 6 of the Insurance Rules on the Encouragement of Long-Term Shareholder Engagement, as part of the transposition exercise of Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 (“the New EU Shareholders Rights Directive”), which amends Directive 2007/36/EC, as regards the encouragement of long-term shareholder engagement.

The purpose of the said Consultation was mainly to transpose Articles 3g and 3h, inserted by the new Chapter 1b of Article 1 of the New EU Shareholders Rights Directive, in a proposed new Annex III to Chapter 6 in Part B of the Insurance Rules on Systems of Governance.

Further to the said Consultation Document, the MFSA is issuing a feedback statement on the comments received, in relation to the consultation referred to above. An outline of the main comments received and the MFSA’s position in relation thereto is provided below.

## 2.0 Main comments received on the proposed new Annex III and the MFSA’s position

*2.1 Industry Comment: A market participant queried whether the reporting requirements would be fulfilled if the respective information is included only in the SFCR.*

**MFSA’s position:** The MFSA would like to confirm that since the SFCR is disclosed publicly in terms of article 51 of the Solvency II Directive and Article 301 of the Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), an authorised undertaking may include the information required in paragraphs 1.11 to 1.13 of the new Annex III in the solvency and financial condition report.

*2.2 Industry Comment: A market participant commented that the definition of “asset manager” found in the New EU Shareholders Rights Directive, is not faithfully reflected in Annex III of Part B of Chapter 6 of the Insurance Rules.*

**MFSA comments:** The MFSA has amended the definition of “asset manager” found in Annex III to align it fully with the definition found in the New EU Shareholders Rights Directive.

*2.3 Industry Comment: An industry respondent was of the view that materiality considerations are important in order to comply with the requirements of Annex III of Part B of Chapter 6 of the*

*Insurance Rules. The respondent clarified that by materiality, the authorised undertaking would be allowed to make a distinction between a strategic (material) portfolio position and a non-strategic investment. Clarification was sought as to whether these materiality thresholds apply only in so far as disclosure regarding the votes cast is concerned, or whether such materiality can be extended to the disclosures under paragraphs 1.4 to 1.6. Clarification was also sought as to whether the consideration of materiality would be subject to an explanation as to why the insurance undertaking was unable or chose not to disclose certain information.*

**MFSA's position:** The MFSA would like to clarify that the option of not disclosing insignificant votes is only limited to votes and does not extend to the disclosure requirements found under paragraphs 1.4 to 1.6 of the new Annex III. Where the authorised undertaking chooses not to comply with one or more of the requirements listed in paragraphs 1.4 to 1.6 of the new Annex III, such undertaking is required to publicly disclose a clear and reasoned explanation as to why the undertaking has chosen not to comply with one or more of any such requirement, irrespective of materiality considerations.

*2.4 Industry Comment: An industry respondent requested confirmation as to whether the disclosures requested could be made in aggregate form so as not to submit disclosures in relation to each investee company individually.*

**MFSA's position:** The MFSA is of the view that it is not within the spirit of the New EU Shareholders Rights Directive for disclosures to be made on an aggregate level since certain disclosures pertaining to different investee companies may differ, thus hindering the requirement of transparency.

*2.5 Industry Comment: Clarification is sought as to whether the disclosures requested under paragraphs 1.4 to 1.6 are qualitative or quantitative in nature.*

**MFSA's position:** The MFSA would understand that the information to be provided would be both of a qualitative and a quantitative nature.

*2.6 Industry Comment: Further guidance has been requested by a market participant as to the expectations of the Authority in respect of conflict of interest disclosures required in paragraph 1.10.*

**MFSA's position:** The requirement to disclose conflicts of interest is a result of Article 3g(3) of the New EU Shareholders Rights Directive. A similar requirement is found in paragraph 34 of Annex 1 of Chapter 6 of Part B of the Insurance Rule, which provides that *"The authorised undertaking should describe in its investment policy how it identifies and manages any conflict of interest that arises regarding investments, irrespective of whether they arise in the undertaking or in the entity which manages the asset portfolio. It should also document the actions taken to manage such conflicts."* It is up to the undertaking concerned to identify and manage conflicts of interest in

relation to its engagement activities, irrespective of whether they arise in the undertaking or in the asset manager.

*2.7 Industry Comment: A market participant sought clarification as to whether in respect of paragraph 1.11, the specific disclosures are of a qualitative rather than a quantitative nature.*

**MFSA's position:** The MFSA is of the view that public disclosures are to be of a qualitative and a quantitative nature.

*2.8 Industry Comment: An industry respondent queried whether an authorised undertaking is allowed to make a distinction between strategic and non-strategic portfolio positions when addressing these disclosure requirements.*

**MFSA's position:** In the MFSA's view, there appears to be no exception to the public disclosures requirements to be made in terms of paragraph 1.12 of Annex III of Chapter 6 of Part B of the Insurance Rules.

### 3. Contact

Any comments or queries in relation to this Feedback Statement should be directed to [ipsu@mfsa.com.mt](mailto:ipsu@mfsa.com.mt).