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Request to temporarily extend the time period to hold the General Meeting of a Societas Europaea (SE) to twelve months and to extend the entry into force of the Implementing Regulation of SRD II.

Dear Ms Tuts,

Deutsches Aktieninstitut, representing German capital market oriented companies, are deeply concerned about the current tremendous challenges European companies have to cope with due to the Corona virus outbreak. Business operations of countless European companies have been hit in an unprecedented intensity.

Members of Deutsches Aktieninstitut do their utmost to adopt contingency plans, including the deployment of business continuity measures, to ensure operational continuity whilst at the same time being in line with regulatory obligations. However, necessary measures of public authorities to prevent the pandemic from further spreading make it increasingly difficult for companies to comply with each and every requirement of (European) regulation.

One example is the difficulty to hold General Meetings according to the delays prescribed by law, as in many member states large gatherings of persons have been prohibited. Whilst several member states have taken action to mitigate the situation on national level, they do not hold the competence to provide relief for companies under the legal form of a Societas Europaea (SE).

According to Art. 54, issuers in the form of a SE have to hold their General Meeting within the first six months after the end of the financial year. If the business year of a company corresponds to the calendar year, the postponed General Meeting must therefore be held at the end of June 2020 at the latest. Planning a General Meeting requires considerable time and resources and is also dependent on circumstances that companies cannot influence. These include, for example, the availability of specialized service providers and a venue that is suitable for the special legal requirements of a General Meeting. Without a change in legislation, numerous issuers in the form of a SE that had to postpone their General Meetings due to the prohibition of gatherings are now likely to hold them as late as possible, i.e. in June or even the second half of June. This is likely to lead

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to a shortage of specialized service providers necessary to hold the General Meeting. Issuers and service providers therefore need more flexibility to schedule their General Meetings.

A postponement only until June this year would not solve the considerable practical challenges for companies given the current circumstances and would not always be possible. In addition, it is unknown, whether General Meetings continue to not being allowed to take place in June due to the overarching goal of health protection.

If issuers schedule their General Meetings in breach of Art. 54 paragraph 1 of Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), they face the risk of fines and claims for damages. Furthermore, as long as the deadline under Art. 54 paragraph 1 of Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) has not been extended, holding the General Meeting past the statutory six-months-period is likely to lead to a loss of image for the respective issuer.

In this exceptional situation, companies need more flexibility. We hence kindly ask you to consider an extension of the 6-month period for SEs to a 12-month period at least for the AGMs of this year. Taking into account that for many issuers the last financial year ended on 31 December 2019, the deadline for holding the General Meeting is quickly approaching, in particular as issuers have to observe statutory convening periods. Hence, this is, unfortunately, a matter of utmost urgency and needs to be solved by mid of May 2020.

Finally, considering that not only issuers, but also intermediaries face tremendous challenges at the moment, we believe that a one-year postponement of the Implementing Regulation on the SRD II is worth to be considered. Intermediaries report that the implementation cannot be fully completed by September 3, 2021. This is problematic for issuers, since functioning and legally compliant processes are very important for them. A one-year postponement would ensure an easier and smoother implementation for intermediaries and consequently provide better predictability and certainty for issuers.

Yours faithfully



Dr. Franz-Josef Leven  
Deputy Managing Director