Disclosing Information Necessary for Identification of Members of Closed-Ended Investment Funds

Detailed Information for KDPW Direct Participants

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Document History

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1. Background

The purpose of the document is to present the assumptions for systemic solutions ensuring that KDPW and KDPW participants can process the right of closed-end investment funds or investment fund companies to receive information necessary for the identification of the members of a closed-end investment fund and the number of investment certificates (hereinafter: "IC") issued by it, as required by Article 123a of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds (hereinafter: "Investment Fund Act"), as amended by the Act of 16 August 2023 amending certain acts in connection with ensuring the development of the financial market and the protection of investors in that market.

Members of a closed-end investment fund mean holders of IC issued by the fund.

A person authorised to receive information necessary for the identification of closed-end investment fund members and the number of IC held by them (hereinafter: “authorised person”) is understood as the closed-end investment fund (FIZ) or the investment fund company (TFI).

The scope of the specification includes the preparation and implementation of systemic solutions supporting the exchange of information necessary for the identification of IC holders, in particular the transmission of a request for disclosure of the identification of IC holders and IC holder identification in response to the request.

It is assumed that the exchange of information between KDPW and direct participants, to the extent of the transmission of the content of a request by KDPW to the participants and the transmission of a response to the request by the participants or other intermediaries, will be carried out by means of ISO 20022 messages.

It is assumed that the exchange of information to any other extent, in particular the exchange of information between KDPW and an authorised person, will be carried out with the widest possible use of a dedicated web application.

The provisions of Article 123a of the Investment Fund Act enter into force on 30 May 2024. The systemic solutions presented in the document should be implemented by and available as of 31 May 2024.

2. IC Holder Identification Disclosure Process

2.1. Legal Requirements

Following an interpretation of the provisions of Article 123a of the Investment Fund Act, it is assumed that, upon the request of an authorised person, entities maintaining securities accounts are required to make available through KDPW the following information (“IC holder identification”):

1) the first name and family name or (company) name, the address of the residence or registered office of the person in whose securities account or omnibus account the IC covered by the disclosure request are recorded or the person who is the beneficial holder of the IC recorded in the sponsor’s register;

2) the number of IC held by the person.

2.2. Process

It is assumed that the IC holder identification disclosure process in the typical case, i.e., where the request includes an instruction for its onward transfer, consists of:

1) submission of a request for disclosure of the identification of IC holders (Disclosure Request) by an authorised person to KDPW,
2) forwarding of the Disclosure Request by KDPW to KDPW direct participants,
3) forwarding of the Disclosure Request by KDPW direct participants to holders of omnibus accounts maintained by the participants,
4) transmission of a Disclosure Response by direct participants to KDPW with regard to balances in securities accounts and omnibus accounts or in the sponsor’s register,
5) transmission of a Disclosure Response to KDPW directly by intermediaries other than direct participants with regard to balances in accounts maintained by these intermediaries,
6) verification by KDPW of the information provided by the participants/other intermediaries and acceptance or rejection of the data,

7) preparation of aggregate IC holder identification by KDPW,

8) provision of the aggregate IC holder identification by KDPW to the authorised person.

2.3. ISO 20022 Information Exchange

It is assumed that the following ISO 20022 messages will be used for the exchange of information between KDPW and direct participants for the transmission of requests by KDPW to the participants and the transmission of responses by the participants to KDPW:

- ShareholderIdentificationDisclosureRequest (seev.045.001.04),
- ShareholderIdentificationDisclosureRequestCancellationAdvice (seev.046.001.01),
- ShareholderIdentificationDisclosureResponse (seev.047.001.02),
- ShareholderIdentificationDisclosureResponseCancellationAdvice (seev.048.001.01),
- ShareholderIdentificationDisclosureResponseStatusAdvice (seev.049.001.01),
- CorporateActionNarrative (seev.038.001.05).

Each message will have a BusinessApplicationHeader (head.001.001.02).

The identifiers of the messages sent by KDPW to participants will be unique within the entire life cycle of the defined event and will be numbered in ascending order.

Diacritical marks will be used in messages on the same terms as in the case of listed company shareholder identification, including in particular the use of Polish diacritical marks.

With regard to the encoding of ISO20022 messages, KDPW will generate output messages encoded in UTF-8 and will ensure processing of input messages encoded in UTF-8.

The ISO 20022 message schemas of the ISO 20022 messages used in the IC holder identification disclosure process should be different from those used for the listed company shareholder identification disclosure process and different from those used for the non-public company shareholder identification disclosure process.

The xsd schemas specific to the IC holder identification disclosure process will be used. Link to xsd schemas:

https://www2.swift.com/mystandards/#/mp/mx/_VgF1cJWmEe6E1p5TNyIeBQ!usage_guidelines

3. Requirements for IC Holder Identification Disclosure Requests

Below are the requirements for IC holder identification disclosure requests which may be relevant to KDPW direct participants.

3.1. Requests Made by Authorised Persons

An IC holder identification disclosure request may only be made by an authorised person via a dedicated web application.

The authorised person is required to provide the following details:

- ISIN code covered by the request,
- record date,

- scope of identification, the same as in the listed company shareholder identification: full identification, i.e., concerning all IC holders, or identification only at KDPW level.

3.2. Request Content

The request content will be enriched by KDPW with the elements necessary to generate the seev.045 message (ShareholderIdentificationDisclosureRequest) in accordance with the relevant xsd schema.

KDPW will ensure that the request message transmitted to direct participants:

- contains appropriate values of the required fixed elements (i.e., invariable for all IC holder identification disclosure requests submitted to KDPW), in particular the elements concerning the identification of KDPW as the recipient of the response;
- has the identifier (reference number) IssuerDisclosureRequestIdentification unique at the KDPW level; identifiers for IC holder identification disclosure requests will be assigned so as to easily distinguish them from requests concerning shareholder identification for listed companies or non-public companies; the distinguishing element for identifiers of IC holder identification disclosure requests will be a string of 5 to 8 characters: "IICD", for example, in 2024, the first eight characters of the identifier for IC holders will be the string: PL24IICD (where "24" is the successive year in the 21st century and "IICD" flags the request as relating to IC holders);
- indicates 15:00 as the Issuer Disclosure Deadline, understood as the deadline by which intermediaries should transmit responses to the request;
- indicates that the request message should be forwarded by the participant to subsequent intermediaries (positive value of the ForwardRequestIndicator);
- does not contain the ShareholderRightsDirectiveIndicator <ShrhldrRghtsDrctvInd>;[1]
- indicates the country of jurisdiction of the disclosure request <PlcOfJursdctn> in the form of a country code according to ISO3166, i.e., "PL";
- indicates the act of law under which the disclosure is made <AplblLaw> as indicated in the message schema.

3.3. Forwarding Requests to Direct Participants

An IC holder identification disclosure request in which the ForwardRequestIndicator is positive will be forwarded by KDPW to direct participants as message seev.045.

The request is only to be forwarded to those direct participants who, from the date of the request up to and including the record date:

- hold IC covered by the request in depository accounts or omnibus accounts with KDPW, or
- have pending operations in the KDPW system involving IC covered by the request, provided that their settlement date is on or before the record date and, as a result of that settlement, the IC are to be transferred to the depository accounts maintained for them in KDPW.

[1] According to the SMPG Shareholders Identification Disclosure messages Market Practice: "This indicator should be set by the issuer CSD or first intermediary. It should be set to YES (value "true") only when the request is in scope of SRD II and the request has been received from the issuer.
When the indicator is set to NO, the request is to be intended as in scope of SRDII the issuer CSD or first intermediary did not receive it from the issuer. (…)
If the shareholder identification request is outside the scope of SRD II, this indicator should not be populated."

An IC holder identification disclosure request is not forwarded to those direct participants who hold IC covered by the request only in securities accounts maintained by KDPW (participants with the participation type “depositor”).

A request submitted to KDPW will be immediately processed and forwarded to direct participants. The same rule applies to any request modification or cancellation.

3.4. Request Modification/Cancellation

The authorised person may cancel the request. In this case, the direct participant receives the seev.046 message from KDPW. The seev.046 message contains the relevant references to the cancelled request.

Any modification of a request requires its cancellation (via message seev.046) and the submission of a new request.

4. Requirements for Disclosure Responses

4.1. General Requirements

A response to an IC holder identification disclosure request should be provided and transmitted to KDPW by direct participants immediately and no later than the issuer deadline.

The deadline also applies in the event of any cancellation or update of a request response.

Disclosure responses are provided by direct participants who maintain accounts in which holding balances of IC covered by the request are recorded on the record date.

The response is transmitted by means of the seev.047 message according to the relevant xsd schema defined by KDPW.

In the case of the seev.047 message, it is recommended to use pagination regardless of the size of the message.

A direct participant may revoke a response it has transmitted by means of the message seev.048 according to the relevant xsd scheme defined by KDPW.

4.2. Disclosure Response Content

Direct participants should only provide disclosure responses with respect to IC recorded in depository accounts or omnibus accounts maintained by KDPW.

Responses with respect to IC recorded in securities accounts maintained by KDPW (in the case of depositors) should be generated by KDPW.

When responding in a seev.047 message to an IC holder identification disclosure request, direct participants should provide KDPW with information on the holding balances on the record date of all holders of securities accounts or omnibus accounts or persons who are beneficial owners of IC recorded in the issue sponsor’s register using the AccountHolder <AcctHldr> element in the Disclosure <Dsclsr> block. Direct participants or other intermediaries disclose:

- IC holders who are legal persons by means of the LegalPerson <LglPrsn> element,
- IC holders who are natural persons by means of the NaturalPerson <NtrlPrsn> element.

Disclosures include the address details of the securities account or omnibus account holder or the person who is the beneficial owner of IC recorded in the issue sponsor’s register (address of residence or registered office).

For each disclosed securities account holder or person who is the beneficial owner of IC recorded in the issue sponsor's register, the participant should indicate the relevant account/register balance (ShareholdingBalance <ShrhldgBal>) and the type of holding (ShareholdingType <ShrhldgTp>) = "BENE". BENE = holding IC as beneficial owner.

For each disclosed omnibus account holder, the participant should indicate the relevant account balance (ShareholdingBalance <ShrhldgBal>) and the type of holding (ShareholdingType <ShrhldgTp>) = "NOMI". NOMI = IC in intermediary's account.

In the case of jointly held IC, it should be possible to disclose the natural person who is the joint holder assigned to the balance of the securities account/sponsor's register[2] - the seev.047 message allows more than one natural person to be assigned to a balance.

The following rules should apply to the direct participant's own securities:

- If the participant maintains a securities account for itself, it should indicate the type of holding BENE and itself as IC holder;[3]
- If the securities account is maintained for the participant by KDPW (participation type: depositor), the type of holding BENE should be indicated by KDPW (in the disclosure response generated by KDPW).

The response requires the LEI as the IC holder identifier if the holder is a legal entity. In the case of an IC holder who is a natural person, the identifier (Identification <Id>) of Proprietary type (Issuer <Issr> = "KDPW") with a fixed value will be required from KDPW participants, independent of the disclosed person: "NVAL" (<Id>NVAL</Id>).

The response provided by a direct participant requires an entity account (which is a depository account) in KDPW (SafekeepingAccount <SfkpgAcct> element in the SafekeepingAccountAndHoldings <SfkpgAcctAndHldgs> block).

The entity account number should be constructed as follows:

- first four characters: the four-character institution code assigned by KDPW (e.g., 0900);
- subsequent characters: the unique account identifier within the institution's accounts in KDPW (e.g., 0100).

The first four characters identifying the institution and the subsequent characters identifying the account within the institution's accounts should be given without separators (e.g., as follows: 09000100). An invalid account identifier will result in the rejection of the message.

It will be possible to disclose holding balances of multiple entity accounts in KDPW within a single disclosure response. Disclosures relating to one entity account cannot be communicated in different responses.

4.3. Response Acceptance/Rejection

KDPW accepts a response received from a direct participant to a seev.047 request provided that it matches the seev.045 request processed by KDPW, in particular with regard to the values of the following elements of the IssuerDisclosureRequestReference block:

- IssuerDisclosureRequestIdentification,
- FinancialInstrumentIdentification,
- ShareholdersDisclosureRecordDate.

[2] On the same terms as in listed company shareholder identification disclosures.

[3] Requirement for KDPW participant systems. No validation is required at kdpw_stream level.

In the event of a negative verification of the reference data, the disclosure response will be rejected.

Responses from direct participants will be verified by KDPW to ensure that the account balance shown in the response matches the balance of the relevant depository account in KDPW. In the event of a negative verification result, the disclosure response will be rejected. The direct participant will be informed of the acceptance or rejection of the response by KDPW via message seev.049.

If the disclosure response is rejected, the seev.049 message will indicate the reason for the rejection using the ReasonCode. KDPW will use a set of its own error codes, the same as for listed company shareholder identification.

In the case of a negative result of the verification of the seev.047 message against the xsd schema, KDPW will inform the participant by means of the message admi.err.

4.4. Response Modification/Cancellation

A direct participant may cancel a response transmitted by it using message seev.048.

Modification of the response requires the cancellation of the response previously sent as message seev.047.

5. Message Flows

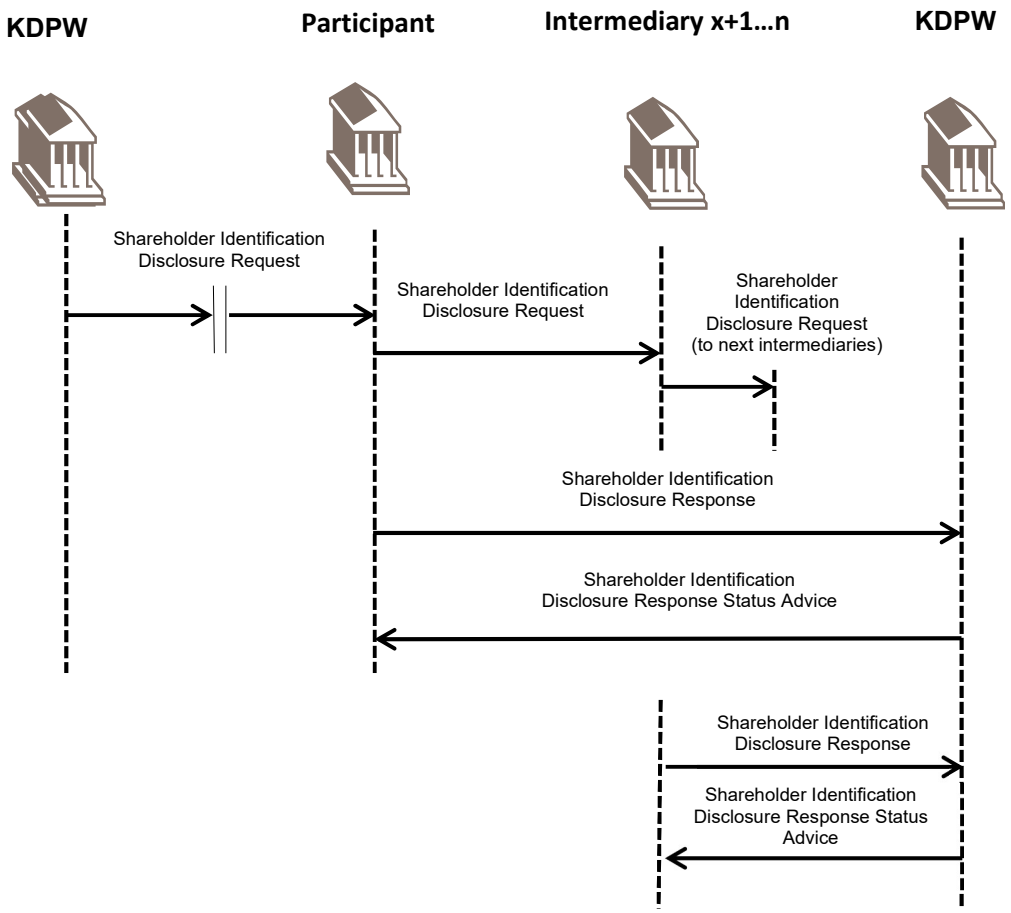
5.1. Message Flow Scenarios

5.1.1 Scenario 1.1. Responding to a Request

KDPW sends a seev.045 message to direct participants in accordance with the request submitted by the authorised person. Participants should forward the message seev.045 to the intermediaries for whom they maintain omnibus accounts.

Direct participants or other intermediaries should forward a disclosure response to KDPW using the message seev.047.

The KDPW confirms acceptance or rejection of the disclosure response by means of the message seev.049.

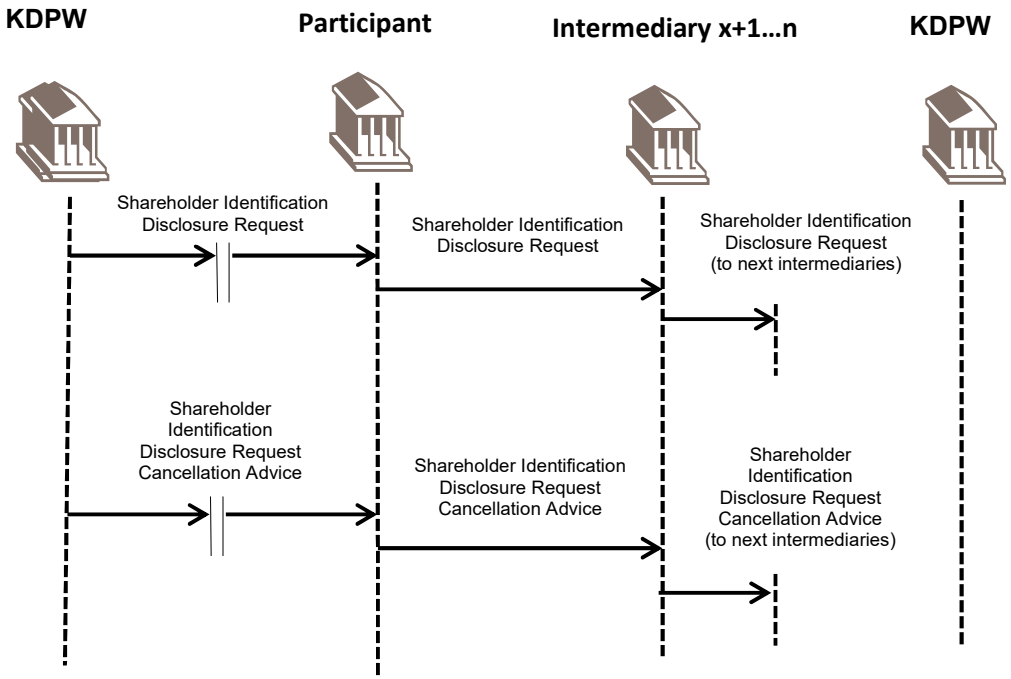


5.1.2 Scenario 1.2. Cancelling a Request

In order to cancel a request according to the authorised person's instruction, KDPW sends a seev.046 request cancellation message to direct participants. Participants should forward the seev.046 message to the intermediaries for whom they maintain omnibus accounts.

In this case, the seev.046 message indicates "withdrawal" (Cancellation Reason = WITH) as the reason for cancellation.

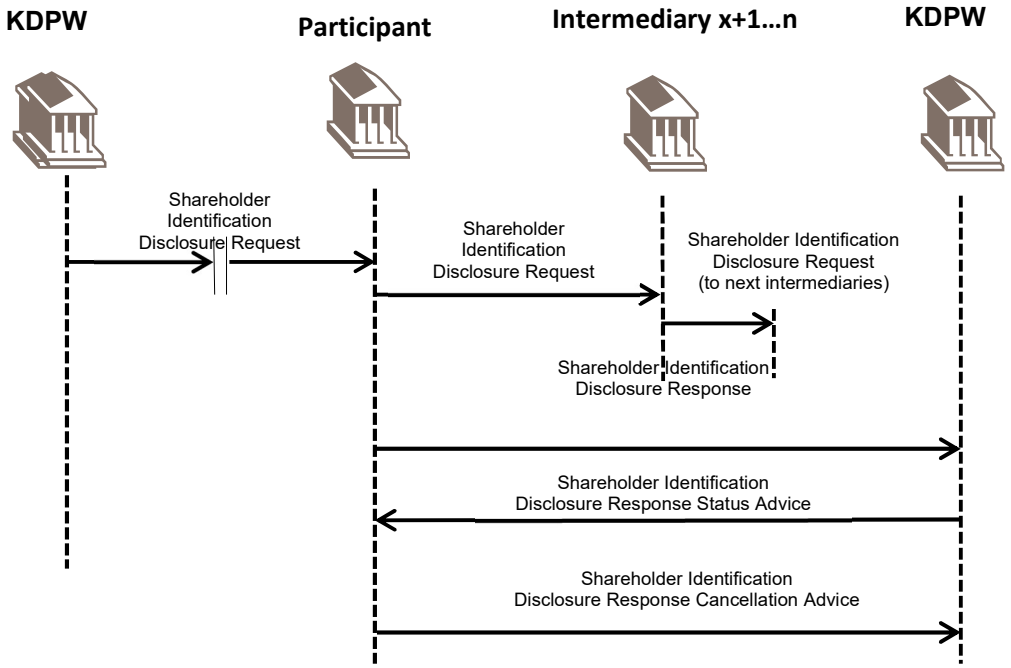
If the request is cancelled by KDPW, the message seev.046 indicates "processing" (Cancellation Reason = PROC) as the reason for cancellation.



5.1.3 Scenario 1.3. Cancelling a Disclosure Response

A direct participant who has submitted a disclosure response to KDPW may cancel it no later than the issuer deadline using the message seev.048.

The seev.048 message should contain a valid reference to the relevant seev.047 message containing the disclosure response to be cancelled.



5.2. Communication Channels

Messages between KDPW and direct participants (in both directions) will be transmitted using the ESDK, ESDI/Web systems or the SWIFT network.[4]

For messages transmitted by KDPW to a direct participant, the communication channel will be the channel indicated by the participant as appropriate for the separate functional area “listed company shareholder identification.”

6. Data Rectification

Pursuant to Article 123a(6) of the Investment Fund Act, an authorised person may request the rectification of incomplete or incorrect data provided to it in response to an IC holder identification disclosure request.

A data rectification request is to be submitted by means of the web application referred to in section 3.1.

As a result of a data rectification request, a seev.045 message with the REPL function will be sent to the intermediary indicated in the request. The message will contain the same data (including the same COAF) as the original IC holder identification disclosure request affected by the rectification. One exception is the Issuer Deadline, which will be set at 15.00 on day Y, i.e., on the 5th business day from the date of the rectification request. Another exception is the value of the scope of identification, which is negative in the case of a rectification request (i.e., ForwardRequestIndicator = "No").

In addition, in parallel to seev.045 with the REPL function, a text message seev.038 will be sent to the participant containing supplementary information on the type of the data rectification and the scope of the rectified data.

Direct participants may transmit corrected responses to KDPW as a new seev.047 message by the Issuer Deadline specified in the seev.045 message with the REPL function.

In the case of a response to a request to a direct participant whose seev.047 response provided in the basic mode has been rejected by KDPW because the number of IC marked with a given ISIN, recorded in the securities accounts or sponsor’s register or omnibus accounts maintained by the participant, is different from the number of IC recorded in the relevant entity account maintained for the participant in KDPW, where the participant acknowledges this status as correct, the participant should transmit to KDPW a seev.047 message in which the number of IC in the entity account in KDPW matches the number of IC in the relevant entity account in the KDPW system, while the sum of the holding balances disclosed in the seev.047 message corresponding to the entity account is different from that account balance. Such a message will not be rejected by KDPW.

[4] In the case of communication via the SWIFT network, the seev.038.001.05 message used in the rectification process will not be transmitted until the version has been updated to that applicable in the SWIFT network.