

## TERMS OF REFERENCE

### Secondary Markets Standing Committee (SMSC)

1. ESMA achieves its mission to enhance investor protection and promote stable and orderly financial markets through four activities: (i) assessing risks to investors, markets and financial stability, (ii) completing a single rulebook for EU financial markets, (iii) promoting supervisory convergence, and (iv) supervising specific financial entities.
2. The ESMA Regulation<sup>1</sup> states that ESMA shall act within the powers conferred by this Regulation and among others within the scope of Directive 2014/65/EU and Regulation (EU) No 600/2014 (MIFID II and MIFIR) and any further legally binding Union act which confers tasks to ESMA on secondary markets matters and any other Union act for which ESMA needs to be consulted thereof.
3. In order to fulfil its mission the Board of Supervisors (BoS) has established the Secondary Markets Standing Committee (SMSC). These Terms of Reference cover the responsibilities and tasks of this group, and the Procedures for ESMA groups (Annex: ESMA/2011/BS/236rev) set out the rules concerning its structure, governance and working methods.

#### Responsibilities

4. In line with the ESMA 2016-2020 Strategic Orientation, (ESMA/2015/935), the SMSC contributes to ESMA's mission by working on issues related to the structure, transparency and orderly functioning of secondary markets for financial instruments, including trading platforms and over-the-counter markets. In particular by:
  - *Contributing to assessment of risks to Investors, Markets and Financial Stability:* the SMSC assesses the impact of changes in the market structure to the transparency and efficiency of trading in relation to all types of financial instruments, mainly those covered by the aforementioned directives and regulations. In particular, the SMSC monitors the efficient implementation of the MiFID II and MiFIR provisions when they relate to trading rules, infrastructures and microstructures of secondary markets.

---

<sup>1</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

- *Promoting Supervisory Convergence:*

- Contributing to the consistent application of MIFID II and MIFIR and related requirements for market participants in particular by sharing experiences gathered in the course of the supervisory or enforcing activity, drafting and submitting to the Board of Supervisors relevant material (such as opinions, Q&As or any other tool available to ESMA) to promote supervisory convergence in those areas;
- Developing ESMA's opinions with respect to pre-trade transparency waivers for equity, equity-like and non-equity financial instruments as well as on the temporary suspension of the transparency provisions.

Promoting the building of common culture on market integrity supervision and enforcement, through the enhancement of supervisory convergence and exchange of supervisory

- *Completing a Single Rulebook for EU financial markets:*

- Following its monitoring activity of the efficient implementation of the MiFID II and MiFIR provisions, preparing, revising or updating technical advice and draft technical standards on the MiFID II/MiFIR provisions applicable to its area of competence.
- Monitor the application of the pre-trade transparency waivers for equity, equity-like and non-equity financial instruments and produce the reports foreseen in Articles 4 and 9 of MiFIR.
- Monitor the application of the deferred publication arrangements for equity, equity-like and non-equity financial instruments and produce the reports foreseen in Articles 7 and 11 of MiFIR.
- Monitor the sizes at which quotes are made available to clients of systematic internalisers and to other market participants relative to the other trading activities of firms and the degree to which the quotes reflect prevailing market conditions in relation to transactions in the same or similar financial instruments on a trading venue as foreseen in Article 19 of MiFIR.
- Preparing draft technical standards on the trading obligation for derivatives foreseen in Article 32 of MiFIR.
- Preparing the reports foreseen in Article 90 of MiFID II and Article 52 of MiFIR.

- *Other related activities:*

- Supporting the publication of the information required by Article 5 of MiFIR with respect to the volume cap mechanism.
  - Supporting/monitoring calculations produced by FITRS and related procedures.
5. In line with ESMA's product intervention powers under Article 39, 42 and 43 MiFIR, the SMSC will put in place means to identify potential investor protection concerns, threats to the orderly functioning and integrity of financial/commodity markets and to the stability of the financial system as a whole and, where appropriate, assess them in accordance with the agreed methodology and procedures, or refer them to another committee for such assessment.
6. The SMSC shall liaise and coordinate with other relevant groups reporting to the BoS where its activities relate or are complementary thereto.

**Structure and governance**

7. The responsibilities of the Chair, rapporteur and members of the SMSC are as set out in the Procedures for ESMA groups.
8. Permanent or temporary groups reporting to the SMSC may be set-up when required in line with the Procedures for ESMA groups.
9. The SMSC has established a Consultative Working Group.
10. The SMSC has established two temporary working groups each with their own terms of reference:
- the Market Structures Task Force
  - the Transparency Task Force
11. The SMSC has established permanent sub-structures for the review of pre-trade transparency waivers.
12. The SMSC will meet on a regular basis as required in order to deliver ESMA's (multi-) annual work programme. Meetings of substructures will be organised as necessary to enable the SMSC to fulfil its tasks.

**Review**

13. The Terms of Reference will be reviewed every two years by the BoS.