

ESMA PEER REVIEW METHODOLOGY

Introduction

1. According to Article 30 of the ESMA Regulation, ESMA shall periodically organise and conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency in supervisory outcomes. To that end, ESMA shall develop methods to allow for objective assessment and comparison between the authorities reviewed.
2. According to Article 4 of the Terms of References of the Supervisory Convergence Standing Committee ("SCSC"), the SCSC shall promote a common and consistent supervisory approach, and develop a common framework, within ESMA, to the use of supervisory convergence tools, and in particular the methodology for peer reviews (the "Methodology")
3. This Methodology, which has to be read together with the ESMA Regulation ("the Regulation") and the Terms of Reference of the SCSC ("the ToR"), sets out the methods and tools to conduct peer reviews of National Competent Authorities ("NCAs").
4. The SCSC developed Principles for Stakeholder engagement in peer reviews [ESMA/2016/632] and a Confidentiality Undertaking and Declaration of Conflicts of Interest that have been integrated into this Methodology (see Annexes I and II).
5. ESMA performs two types of peer reviews: discretionary peer reviews and mandatory peer reviews. Discretionary peer reviews are exercises performed on topics approved by the Board of Supervisors ("BoS") upon proposal by the SCSC whereas mandatory peer reviews are recurrent exercises required by sectoral EU legislation covered in Art. 1(2) and 1(3) of the Regulation. Unless otherwise agreed by the BoS, this Methodology applies to both discretionary and mandatory peer reviews¹.

¹ When the specificities of certain mandatory peer reviews so require, a bespoke methodology applies. A bespoke methodology has been developed for example for peer reviews undertaken under Article 21(6) of EMIR: "Methodology for Mandatory Peer Reviews in relation to CCPs' authorisation and supervision under EMIR" [ESMA71-1154262120-155].

Section 1: Determining the topic and focus for a peer review

6. The BoS sets the strategy for determining in which areas NCAs are to be analysed and their activities subjected to a peer review in order to foster regulatory and supervisory convergence and a common supervisory culture, through consistent, efficient and effective application of sector legislation, thus preventing regulatory arbitrage and achieving a uniformly high level of supervisory outcomes and investor protection.
7. The BoS implements its strategy for regulatory and supervisory convergence through the Supervisory Convergence Work Programme (“SCWP”) which includes the topics to be subjected to Peer Reviews. In the elaboration of the SCWP, input is sought from the Securities and Markets Stakeholder Group (“SMSG”) as well as from the relevant Standing Committees and ESMA Groups, including the SCSC. Being responsible for preparing the work of the BoS, the ESMA Chair may also propose topics for peer reviews.
8. When defining the topics for peer reviews, the following, non-exhaustive, list of criteria shall be considered:
 - Relevance of the topic as regards ESMA's mission of investor protection, orderly markets and financial stability;
 - Scale of the potential issue and expected impact of the peer review in terms of supervisory convergence at the EU level, e.g. relevance from a cross-border perspective, areas with potential differences in practices/understanding of the EU regulatory framework (this will duly take into account the annual priorities set in the SCWP);
 - Adequacy of the peer review as a supervisory convergence tool to address the issue;
 - Existence of relevant guidance on which to conduct a peer review (e.g. EU legislation, technical standards, ESMA guidance, agreed EEA level practice);
 - Timeliness of the peer review, e.g. previous and on-going ESMA work in the area, entry into application of relevant EU legislation.
9. If events so justify, the BoS may adapt the work programme for the SCSC during the course of the year and decide to launch a peer review on a different topic than those listed in the SCWP.
10. In setting up the annual work programme for the SCSC as well as in determining the scope of each peer review, the BoS shall take due account of the limited availability of resources, both human and financial, required for its implementation. Therefore, the

subject matter of a chosen topic for a peer review has to concentrate on the aspects most relevant for supervisory convergence.

11. The focus of each peer review, as defined by the BoS, while respecting the need for both objectivity and proportionality, can be differentiated:

- on the one hand, if the focus is on the legal framework, the singleness of the rulebook requires the SCSC to ascertain that throughout the EEA Union law, including regulatory and implementing technical standards is uniformly implemented and enforceable, and that the implementation of guidelines and recommendations fully respects the “comply or explain” mechanism;
- on the other hand, if the focus is on the actual supervision, on achieving an equally high level of supervisory outcomes and on promoting investor protection through convergence rather than full harmonisation of supervisory practices, this requires the SCSC to take the differences between jurisdictions and markets into account and may therefore justify the BoS in restricting a peer review of supervisory activities to a limited number of NCAs or in targeting a limited scope of activities of certain NCAs.

12. Such differentiation may also apply to the review of the independence of NCAs and their capacity, through the adequacy of their resources and governance arrangements, to achieve high quality supervisory outcomes and to respond to market developments.

13. According to the focus of a peer review, the BoS shall instruct the Assessment Group as to whether the peer review has to target in whole or in part a defined set of jurisdictions chosen on the basis of objective criteria and whether the Assessment Group has to conduct on-site visits to the NCAs of some or all of those jurisdictions.

14. Although for practical and resource reasons, the number of on-site visits needs to be restricted to a limited number of jurisdictions for a given peer review, the BoS shall endeavour to ensure that over several peer reviews all NCAs are subject to on-site visits. The choice of NCAs to be visited during a given peer review shall be made on the basis of objective criteria. With this in mind, the SCSC shall maintain an overview of all on-site visits that have taken place including the number and timing of on-site visits to each NCA.

15. On-site visits enhance the quality of peer reviews. In the selection of NCAs for on-site visits, including in the case of targeted peer reviews described in paragraph 13, the following objective criteria shall be considered at a minimum, taking into account available data and information:

- NCAs’ relative significance as regards the topic under review (assessed through e.g. relative market size and level of activity);

- Relevance of the topic under review at national level and from a cross border perspective;
- Report or indication of non-compliance by NCAs, or
- Lack of clarity of the answers provided by NCAs through their self-assessment or failure to submit a self-assessment.

16. The frequency and number of on-site visits shall be taken into consideration if the objective criteria do not lead to a conclusive selection of NCAs and in order to provide a balance of on-site visits between NCAs.

Section 2: Setting up an Assessment Group led by a Coordinator

17. For each peer review, the BoS, upon proposal by the SCSC, sets up an Assessment Group ("AG") including its Coordinator and Rapporteur and as the case may be, approves a reserve list.
18. A call for candidates to become Coordinator and member of the AG is launched through the BoS. Applications shall be assessed by the SCSC Rapporteur who shall submit to the SCSC the proposed composition of the AG and as the case may be, a reserve list. The size of the AG should be proportionate to the objectives and scope of the review. The proposed composition of the AG should be balanced in terms of policy expertise in the field under review, supervisory experience including in on-site missions and familiarity with peer review exercises. In order to achieve this, the SCSC Rapporteur shall ensure that the call for candidates is sent for information to the SCSC and the relevant Standing Committee and may reach proactively out to SCSC members to identify suitable candidates.
19. An AG shall be chaired by a Coordinator with sufficient seniority who as a rule is a member of the SCSC or another senior representative of a NCA or an ESMA staff member.
20. An ESMA staff member from the Convergence Team shall act as Rapporteur of the AG. Besides the Rapporteur, ESMA staff with relevant expertise may participate in the work of the AG and give support to the Coordinator.
21. AG members should be either SCSC members or experts in the field to be reviewed, including with experience in supervision. AG members should have a good level of English and sufficient seniority so as to be able to work independently and understand and challenge supervisory approaches of other NCAs; they shall be subject to strict confidentiality and conflicts of interest rules. All SCSC members are expected to contribute regularly over time to the AG staffing, taking due account of their respective resource capacities. NCAs shall endeavour to keep the same representatives in an AG during the whole process of a peer review.

22. Should a member leave the AG, depending on the stage of the work and the remaining number of participants in the AG, the Coordinator, in consultation with the Rapporteur, shall decide whether there is a need for replacement. If so, the Coordinator can draw an expert from the reserve list. Alternatively, the Coordinator can request that an open call for candidates be launched via the BoS. In this case, the process as described in paragraphs 17 and 18 shall apply mutatis mutandis.
23. The AG may decide to consult external experts. Such experts shall be bound by a suitable confidentiality agreement.
24. The AG may consult ESMA or the European Commission on specific provisions of Union law.
25. The Coordinator of the AG shall report regularly to the SCSC, highlighting any issues or problems that may arise during the course of the work, and consults relevant ESMA Groups on the on-going work, as need be.

Section 3: The mandate

26. Once an AG for a peer review is set up, its first task shall be to draft its mandate, in line with the instructions received from the BoS and in consultation with the relevant Standing Committees. The mandate shall be approved by the SCSC first and the BoS thereafter.
27. The mandate, covering the topic determined by the BoS and focused as defined by the BoS, shall indicate the proposed stages and timeline for the work to be undertaken. The mandate shall also set out the minimum criteria for the selection of NCAs for on-site visits in line with paragraph 15. The selection of NCAs for on-site visits may need to be adjusted based on the answers provided by NCAs through their self-assessment. When the AG makes a proposal for an NCA to be subject to an on-site visit at the mandate stage, the criteria used by the AG for that selection, in line with paragraph 15, shall be stated in the mandate.
28. Within that framework and as appropriate, the mandate shall cover the assessment of the following areas as foreseen by the Regulation:
 - the independence of NCAs and their capacity to achieve high quality supervisory outcomes, including the adequacy of their resources and governance arrangements, with particular regard to the effective application of the RTS and ITS and of the legal texts falling within the remit of ESMA, and the capacity of NCAs to respond to market developments;
 - the degree of convergence reached in the application of Union law and in supervisory practice, including guidelines and recommendations, and the extent to which the supervisory practice achieves the objectives set out in Union law,

including the determination of good practices developed by some NCAs which might be of benefit for other NCAs to adopt;

- the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.

29. In order to allow the assessment of each area or topic defined above to be made in an objective, transparent and comparable manner, the mandate shall specify for each assessment area or topic which issues shall be key for its assessment and according to which objective criteria these key issues shall be assessed. The definition of those criteria shall take into account, as appropriate, the objectives of the topic under review and the need to strengthen the consistency and equivalence of supervisory outcomes through a uniformly high level of supervisory practices and the promotion of investor protection. Beyond these criteria, the AG may develop benchmarks for each relevant area or topic.

Section 4: The questionnaire

30. In order to achieve the assessments required by its mandate, the AG shall draft a questionnaire to be filled in by each participating NCA. The AG shall adopt the questionnaire, after having consulted the SCSC.
31. The questionnaire needs to provide the AG with a full description by each NCA of its regulations, supervisory activities and practices regarding the topic under review, in a format that allows an objective comparison of all the national submissions. The description has to be factual and must give a frank self-assessment by the NCA of its perceived weak or strong points. Narrative text is to be used as appropriate.
32. The questionnaire has to give guidance to both the NCAs and the AG in order to allow the assessments required by the mandate to be made in an objective, transparent and comparable manner. It must therefore respect the key issues and objective criteria specified in the mandate.
33. The assessment of each area of the mandate has to take into account not only the situation of each NCA on a stand-alone basis, but also of the NCAs in comparison to each other and taken as a whole.
34. It is useful to make reference to or quote the provisions of the relevant EU legislation or ESMA measures in the questionnaire. Where statistics are required, the parameters for the statistics have to be consistent, transparent and clear.
35. The answers to the questionnaire have to be underpinned by acceptable evidence, as defined by the AG for each questionnaire. The evidence is provided in English if

available. When an English version of the evidence is not available, the answer has – to the extent practicable – to describe the relevant evidence in English.

36. The questionnaire has to be available for answering through an IT-tool. Before the launch of the questionnaire, it is tested in the IT-tool by a team consisting of ESMA staff, the Coordinator and a limited number of members of the AG.
37. NCAs should be committed to participate in the work of the AG, devoting appropriate human resources and providing their contributions within the agreed deadlines. Only if all NCAs provide complete, coherent and high-quality responses, can the AG's work result in a meaningful outcome, which appropriately describes supervisory powers, activities and practices as well as enforcement provisions or actions, and allow the AG to draw the appropriate conclusions from its findings.
38. If an NCA does not provide its full contribution within the deadline and if a coordinated intervention by the Rapporteur, the Coordinator and the Chair of the SCSC does not produce the required contribution, the situation is reported to the ESMA Chair for follow-up with that NCA. The lack of contributions by one or more NCAs must not however delay the AG's work.
39. Once it has received the responses by NCAs to the questionnaire, the AG shall start to analyse them with a view to drafting its report. The assessment is not a box-ticking exercise. It requires in-depth understanding of the national submissions and individual as well as collective analysis. This can only be achieved through an ongoing dialogue between the AG and the NCAs, during which the AG may ask for clarifications or for additional evidence. As foreseen by Article 30 of the Regulation, existing information and evaluations already made with regard to an NCA under review have to be taken into account.
40. All participating jurisdictions shall be assessed jointly and simultaneously according to the same criteria, in order to minimise the risk of uneven or biased results. The transparency, objectivity, accuracy and analytic quality of the work are essential to its effectiveness and credibility. The assessment must relate to the key issues defined in the mandate, on the basis of the objective criteria also defined in the mandate. To undertake the assessment work, the Coordinator of the AG shall organise the work taking into account existing and potential conflicts of interests. No member of the AG shall be permitted to assess his/her own jurisdiction.

Section 5: On-site visits

41. For a peer review that includes visits, the BoS, upon a proposal by the AG and after consultation of the SCSC, designates the NCAs to be visited. This would normally occur through the approval of the mandate, but can also be considered at a later stage of the peer review, especially based on the NCAs' responses to the self-assessment. Once NCAs to be visited have been selected, the AG shall specify the areas or issues to be

reviewed, determine the dates and timelines as well as the leadership, size and composition of the visiting team, taking care to avoid conflicts of interest. The leader of the visiting team would normally be the Coordinator unless conflicted; he/she is the point of contact for the NCA to be visited and provides steering to the team.

42. A visiting team shall comprise a subset of the AG members, namely persons from NCAs, other than those to be visited, as well as ESMA staff from the Convergence Team and/or from the expert area with most relevance for the peer review. If needed, because of conflict of interest, the Coordinator, in liaison with the SCSC Chair, may call upon experts on the reserve list or alternatively BoS members to designate additional persons from non-conflicted NCAs for the composition of the visiting teams. In this case, the process as described in paragraphs 17 and 18 shall apply *mutatis mutandis*. Those persons will then also join the AG and contribute to the Assessment Report.
43. Visits shall be announced sufficiently in advance and prepared, involving the NCAs, on the basis of an agenda, list of topics for discussion, request for supporting evidence and documentation to be answered in advance of the visit. Visits are expected to last from one to a maximum of three days.
44. Some of the tools that can be used in on-site visits include, but are not limited to, interviews with NCAs' staff, the demonstration of work carried out, and, if necessary, access to supervisory files. If the NCA so requires, such supervisory files are anonymised.

Section 6: The contents of the Report by the Assessment Group

45. The AG shall produce a report, based on the analysis of the questionnaires and the findings from the on-site visits. The drafting of the report must be subject to a process of interaction with the NCAs concerned.
46. The report shall cover all the issues to be addressed under the mandate and, at least, the elements detailed in Article 30 (2) of the Regulation, as referred to in paragraph 28 above. Moreover, it has to respond to all the following points:
 - (a) signal the extent to which NCAs achieve convergence in supervisory practices and apply specific supervisory provisions;
 - (b) present the measures that competent authorities not applying specific supervisory provisions intend to take to correct the situation or to adopt a more convergent supervisory practice;
 - (c) express views on specific problems encountered by individual NCAs and recommend ways for achieving full implementation by the relevant jurisdictions, where necessary;

(d) include an assessment of the global level of convergence achieved and an indication for each NCA of its level of compliance on a topic by topic basis²;

(e) signal inconsistencies, differences in interpretation, or general problems in the implementation or potential breaches of Union law, ESMA technical standards, guidelines or recommendations in the conduct of commonly agreed supervisory practices and identify the reasons;

(f) recommend (where applicable) that work should be undertaken to amend a specific provision or practice that raises significant problems in relation to the operation of the Single Market or to clarify provisions which are interpreted differently;

(g) describe possible good practices developed by some competent authorities, which might be of benefit for other competent authorities to adopt.

47. Before submitting its report to the SCSC, the AG shall allow sufficient time for accuracy checks by NCAs concerned.

48. The report must clearly state the start and the end date of the information gathering as well as the relevant periods of data collection if appropriate. It must be as accurate and up-to-date as materially possible, taking into account all known relevant developments up to its discussion at the BoS.

Section 7: The Peer Review report to the Board of Supervisors

49. The report by the AG, comprising an executive summary and clearly setting out its conclusions on each of the points listed in paragraph 4 of the ToR and paragraph 46 above, shall be submitted for consultation to the SCSC before being sent to the BoS for its approval. The report shall also be presented to the relevant Standing Committee as a relevant interested party in the peer review process.

50. The SCSC may provide comments and proposals for policy discussion to the BoS.

51. As follows from the Regulation and paragraph 4 of the ToR, a peer review may lead to a variety of results, such as:

- findings of potential breaches of Union law, to be dealt with according to the provisions of the Regulation;
- findings that may lead ESMA to recommend changes to Union law;

² The peer review report shall list the compliance level of each NCA (i.e. fully compliant, broadly compliant, partially compliant or non-compliant) on a topic-by-topic or area-by-area basis. A stage of full compliance cannot be reached as long as deficiencies remain.

- findings of incomplete implementation of non-binding “soft” law;
- findings that may lead ESMA to issue guidelines or recommendations;
- identification of existing good practices.

Section 8: Decisions by the Board of Supervisors and publication

52. The BoS shall decide on the publication of the results of the peer review. The peer review report as well as the decisions by the BoS taken as a result of the peer review shall be, as a rule, published on ESMA’s website in full on a named basis, subject to the agreement of the NCA concerned. An NCA that does not give its agreement to publication is expected to state the reasons for this to ESMA. If the BoS agrees, such publication may exclude certain information for confidentiality or sensitivity reasons. On-site visit reports are summarised in the peer review report; an on-site visited NCA may submit a written statement to be annexed to the peer review report before its publication, subject to review by the ESMA Chair.
53. Good practices identified by the AG shall be discussed with the SCSC and the relevant Standing Committees. They shall be made publicly available through the peer review report. Good practices in this context describe regulatory or supervisory practices that have been elaborated by one or more NCAs and which are considered to be particularly effective, well targeted, or broadly applied. In no way are good practices intended to disqualify other practices, or forms of implementation, that may be more suitable for a specific jurisdiction. Good practices do not have any normative or binding character; not being “soft law”, in terms of legal hierarchy, the “comply or explain” procedure does not apply to them. Nor are they ESMA guidelines or recommendations, although they may serve as the basis for developing such guidelines or recommendations.
54. The individual responses to the assessment questionnaire and the onsite visit reports are not published. On-site reports shall be made available on ESMA’s extranet.
55. The results of the peer review shall be presented to the SMSG.

Section 9: Implementation and follow-up

56. The SCSC, if so instructed by the BoS, may revisit the topic under review within a reasonable timeframe in order to check on progress made, to ascertain that the BoS’ decisions are implemented and to report back to the BoS.
57. Without prejudice to other actions, whenever the assessment of a NCA has not concluded full compliance under paragraph 46 (d) of this Methodology, the ESMA Chair may send to the relevant member of the BoS or Head of the NCA which was identified as not being fully compliant an individual letter pointing out the findings of the AG. ESMA staff, after analysing the answer received from the NCA in order to monitor the

action taken by the NCA to correct the deficiency, shall report back to the SCSC and the BoS and suggest suitable responses in case of possible delays in implementation. Before submitting the report to the SCSC, ESMA staff shall allow sufficient time for accuracy checks by NCAs concerned.

58. ESMA and its Groups shall stand ready, if requested and as appropriate, to assist NCAs in correcting deficiencies and in achieving better convergence.

ANNEX I

Principles for Stakeholder Engagement in peer reviews

Principle 1 – Interaction can only be considered with stakeholders having an interest – direct or indirect – in the topic under review

1. Stakeholders, for the purposes of this note, have been defined as third parties affected or having any type of interest/responsibility in the subject being examined in the context of a peer review but not subject to the peer review. This means that competent authorities cannot be regarded as stakeholders.
2. Stakeholders can be split in two categories:

Category A – Entities which although not established as competent authorities under national law have been entrusted with some supervisory/oversight functions, either directly or by delegation, e.g. trading venues or post-trading infrastructures, as well as authorities in charge of customer protection, accounting standard setters and/or supervisors, anti-trust authorities, the national ombudsman, etc., when they have a direct or indirect interest /responsibility in the topic under review;

or

Category B – Other stakeholders (regulated or non-regulated) , comprising a wide variety of entities, including – but not limited to- market participants (such as intermediaries, listed firms, fund managers, trading venues, post trading infrastructures (as supervised entities)), law firms, investors' associations, academics, etc.

3. ESMA already has dedicated groups for institutional interaction with stakeholders. The SMSG is typically involved in supervisory convergence work: it provides topics for possible peer reviews and is informed of the outcome of these reviews. Similarly, a number of standing committees have established Consultative Working Groups (CWGs), which provide technical input on specific matters. Interaction with the existing stakeholder groups should therefore be considered in light of the objective and desired outcome of stakeholder involvement in a peer review, although it cannot be seen as a prerequisite to interaction with other stakeholders.

Principle 2 – Stakeholder interaction needs to be reasoned and its usefulness in a given peer review is a matter for the Board of Supervisors to decide upon

4. The usefulness of engaging with stakeholders will be considered when preparing the mandate for a peer review, and if such interaction is deemed desirable, it will be included in the mandate, highlighting the line of reasoning, the expected benefits and

the type of stakeholders targeted. As the mandates of peer reviews are to be adopted by the BoS, so will any stakeholder interaction.

5. If the need to engage with stakeholders emerges at a later stage of a peer review specific approval of the BoS needs to be granted before any interaction with stakeholders can be organised.
6. Depending on the subject-matter under review the purpose of stakeholder visits could be:
 - to make sure that all relevant parties having some supervisory function on the topic under review are engaged with;
 - to obtain information as regards a specific peer review topic under way, (beyond what is provided by the NCAs to ESMA/the AG under Article 35 of the Regulation), for the purposes of better understanding the supervisory practices adopted by the relevant NCA in relation to the matter under review;
 - to make use of the practical experience of stakeholders, gathering information about the market or the subject under scrutiny, especially as regards cross-border activities;
 - to complement the views provided by NCAs in the self-assessment process; and
 - to identify good practices or points of attention as perceived by the market.

Principle 3 – NCAs must permit engagement with category A stakeholders, but a discretion remains as regards engagement with category B stakeholders

7. If stakeholder engagement in the context of a specific peer review is approved in principle by the BoS, NCAs would not be permitted to veto engagement with *category A* stakeholders, whose tasks are closer to NCAs. NCAs would, however, retain discretion to refuse to permit engagement with *category B* stakeholders, such as financial market participants.
8. As regards the second category of stakeholders, such a refusal should be explained in broad terms (e.g. enforcement case underway at some firms, lack of representativeness of proposed stakeholders), and conveyed for information to the BoS.

Principle 4 – Stakeholder meetings are organised in liaison with NCAs

9. Selecting stakeholders is a joint effort of the AG and NCAs concerned. While the AG establishes criteria for selecting stakeholders that will be applied consistently throughout the review, the NCAs are best placed to set up a list of stakeholders meeting those criteria. Based on this list, and on the availability of stakeholders, the AG will then finalise the shortlist of stakeholders with whom to interact.

10. NCAs will arrange the meetings with stakeholders and will be present at the meetings with the AG. The meeting can be arranged either at the NCAs' premises or, if deemed easier for the NCA and suitable for the stakeholder, at the premises of the stakeholders. The NCA will also be present whenever there are contacts with the stakeholders via conference calls, video conferences and comparable means.
11. Last, the nature of the visit and interaction needs to be clarified at the outset. The information to be sought should be related to market intelligence and general information, and should not cover specific client files nor disputes/(pre)litigation between firms and NCAs, nor files/data related to the NCAs' exercise of their supervisory tasks towards visited supervised stakeholders.

Principle 5 – Confidentiality

12. The content and type of information exchanged with stakeholders will vary from one peer review to another.
13. Any communication and interaction with the AG must be considered confidential and must not violate the rules on professional secrecy in national legislation.

Principle 6 – Published peer review reports do not contain stakeholders' names

14. The outcome of stakeholder engagement will be reflected in the peer review report, without necessarily requiring a specific section. Whenever reference is made to stakeholders' views, this should be made clear.
15. However, as the information that stakeholders may provide is relevant as one among many contributions to the peer review reports, stakeholders' names will be redacted before the report is published.

ANNEX II

CONFIDENTIALITY UNDERTAKING AND DECLARATION OF CONFLICTS OF INTEREST

to be signed by Members of the Assessment Group

In view of the following definitions:

“Assessment Group” designates a group of representatives of national competent authorities (NCA) and ESMA staff tasked by the ESMA Board of Supervisors to undertake a peer review, as specified under Section 2 of ESMA Review Panel Methodology (ESMA/2013/1709).

“Assessment Group Activities” encompass (but are not restricted to) activities related to my role and responsibilities for the purpose of contributing to a peer review on behalf of the European Securities and Markets Authority (“ESMA”). This includes, for example, any meeting (including meeting preparation and follow-up as well as on-site visits), associated discussion or any other related activity.

“confidential information” means all information, facts, data and any other matters of which I acquire knowledge, either directly or indirectly, as a result of my Assessment Group activities.

“confidential documents” mean all drafts, preparatory information, documents and any other material, together with any information contained therein, to which I have access, either directly or indirectly, as a result of my participation in Assessment Group activities. Furthermore, any records or notes made by me relating to confidential information or confidential documents shall be treated as confidential documents.

“conflict of interest” means any situation or other current/potential/perceived circumstance that bears the potential to unduly influence my professional judgement in the course of my participation in Assessment Group activities.

“interest” means the relation of being objectively concerned in something, e.g. by having a right or title thereto, a claim thereupon, or a share therein, falling within fields of competence of ESMA that creates or have the potential to create a conflict of interest.

“third party” means any legal or natural person other than ESMA and its staff, the members of the Supervisory Convergence Standing Committee (SCSC), as well as the members of the Board of Supervisors or NCA staff.

I take note and acknowledge the methodology of the former Review Panel (ESMA/2013/1709) (Peer Review Methodology), the guidance note in relation to on-site visits in peer reviews (ESMA/2015/RP/011) and the principles on stakeholder engagement in peer reviews (ESMA/2016/632). Any guidance on confidentiality and conflicts of interest in these documents remain fully applicable. I will hold myself to the same high standards as established in the Decision of the Management Board “Adopting a Policy on Independence and Decision Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff” (ESMA/2014/MB/60).

In the course of a peer review that ESMA has asked me to carry out, I may directly or indirectly obtain information orally or in writing (whether or not in documented form/printed or computer-based information) relating to the NCA’s and its internal affairs, and information about third parties.

In consideration of being engaged or permitted to carry out that work, I hereby agree and acknowledge as follows:

1. to treat all confidential information and confidential documents under conditions of strict confidentiality.
2. not to disclose (or authorise any other person to disclose) in any way to any third party any confidential information or confidential document without ESMA’s and the NCA’s prior written consent.
3. not to use (or authorise any other person to use) any confidential information or confidential document other than for the purposes of my work in connection with Assessment Group activities.
4. to dispose of confidential documents as confidential material as soon as I have no further use for them.
5. to return to ESMA all confidential information no later than the end of my engagement to carry out work for ESMA and sooner if I have no further use for them.
6. to agree that all rights in any writings or other work done by me in connection with my work at ESMA shall be the property of ESMA.
7. to continue to be bound by this undertaking after the end of my engagement to carry out work for ESMA, and without limit of time.
8. to disclose to the Assessment Group coordinator and to the Assessment Group rapporteur all current circumstances that might result in a conflict of interest.

9. to inform the Assessment Group coordinator and the Assessment Group rapporteur without undue delay of any conflict of interest that might arise during the course of the activities of the Assessment Group.

I hereby take note that all individual, non-public, securities and market level quantitative and qualitative data made available to me in the context of the Assessment Group exercise must be kept strictly confidential. Originals will be returned to the NCA in the Member State concerned. I also understand that with the approval of the NCA the ESMA may retain confidential documents or copies of confidential documents needed for the performance of the peer review. In such case, I declare that at the end of the peer review that ESMA has asked me to carry out I will hand over any confidential documents or copies of confidential documents needed for the performance of the peer review to the Assessment Group rapporteur. This includes electronic and print versions.

For the purposes of this undertaking I am subject to Professional Secrecy. In the case that I am not subject to the obligations on professional secrecy as stipulated by Article 70 of 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/EC³. I agree to be bound by Article 70 of the ESMA Regulation and subsequently by the ESMA Management Board Decision on Professional Secrecy and Confidentiality.⁴

This undertaking shall not be limited in time, but shall not apply to any document or information that I can reasonably prove was known to me before the date of this undertaking or which becomes public knowledge otherwise than as a result of a breach of any of the above undertakings.

I acknowledge that, where disclosure of the information I obtain is controlled by statutory provisions, I may be prosecuted for wrongful disclosure.

I acknowledge that any declaration of Interest (DoI) is to be made in writing using the declaration template (Annex 1).

I HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO ITS TERMS.

³ 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, published in the Official Journal of the European Union, L 331, 15.12.2010, p. 84-119, accessible via internet: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R1095>.

⁴ Decision ESMA/2011/MB/4) of 11 January 2011 and accordingly to relevant obligations applicable to the staff of ESMA in the Union's Staff Regulations, particularly concerning personal interests, integrity, and the unauthorised disclosure of information whether de jure as ESMA staff or as personal commitment as a member of a NCA participating to the Assessment Group.

Three copies of this agreement have been signed of which one is intended for the purposes of the NCA concerned, one for ESMA and the last for each member of the Assessment Group.

I acknowledge having received a fully executed copy of this agreement.

Signed

.....

Date

.....

....

In witness of the Assessment Group rapporteur.....

Annex - Declaration of Interests (DoI)

First Name	
Surname	
Authority / MS	
Role in Assessment Group	
Interest	

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☐ I declare that this declaration is truthful and complete.

☐ Whenever I have a Conflict of Interest, I will alert the Assessment Group coordinator and to the Assessment Group rapporteur without undue delay.

Date:	Signature: