

DECISION OF THE SECURITIES AND MARKETS STAKEHOLDER GROUP

Rules of Procedure

The Securities and Markets Stakeholder Group

Having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (the European Securities and Market's Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC¹ (the 'Regulation' and 'Authority'), in particular Article 37 of the Regulation

Whereas:

- (1) Article 37(1) of the Regulation provides that the Group's role is, to 'help facilitate consultation with stakeholders in the areas relevant to the tasks of the Authority'. More in particular, Article 37(1) provides that the Group 'shall be consulted on actions taken in accordance with Articles 10 to 15 concerning regulatory technical standards and implementing technical standards and, to the extent that these do not concern individual financial institutions, Article 16 concerning guidelines and recommendations. Such facilitation of consultation implies the Group being asked to give its advice in advance of the issue of any such consultation by the Authority.
- (2) Article 37(5) provides that the Group 'may submit opinions and advice to the Authority on any issue related to the tasks of the Authority, with particular focus on the tasks set out in Articles 10 to 16 and Articles 29, 30 and 32', where the latter refer to common supervisory culture, peer reviews of competent authorities and assessment of market developments.
- (3) Article 17(2) of the Regulation provides that the Group may submit a request to the Authority, as appropriate, to investigate the alleged breach or non-application of Union law.
- (4) The Authority's working language is English and it is therefore advisable that the Group has the same working language.
- (5) Group members may be on occasion privy to documents and information which are not yet public and are therefore confidential in nature. The Members firmly undertake not to disclose this information to any individuals outside the Group.

¹ OJ L331, 15.12.2010, p. 12.



HAS ADOPTED THE FOLLOWING RULES OF PROCEDURE:

Article 1 – Membership appointment and mandates

- (1) The appointment of the Group members is made by the Board of Supervisors in accordance with Article 37(3) of the Regulation.
- (2) Group members serve in a personal capacity in accordance with their appointment under Article 37.
- (3) According to Article 37(4) of the Regulation, Group members shall serve for a period of two and a half years, following which a new selection shall take place.
- (4) Members may serve two successive terms.
- (5) Should a member's position be vacated for whatever reason before the end of their term, a new member shall be appointed out of the list of alternates adopted by the Authority at the latest call for expression of interest for setting up the Group.

Article 2 – Chairperson and Vice-Chairperson

- (1) The Group shall be chaired, in a personal capacity, by one of the Group members. The Group shall elect a Chairperson and one or two Vice-Chairperson(s) during its first meeting or at the beginning of the second meeting. The election of the Chairperson and Vice-Chairperson shall be preceded by and based on a nomination procedure. Any member of the Group may nominate him- or herself or any other member of the Group.
- (2) The Chairperson shall be chosen by consensus. If consensus cannot be achieved the Chairperson shall be elected in a secret ballot by a simple majority of the Group members present at the time of the election. If no simple majority is achieved in the first round, a second round of voting shall be held between the two candidates who received the highest number of votes in the first round. The Chairperson shall serve for the remainder of his or her current term as a Group member.
- (3) The Chairperson shall:
 - (a) chair the meetings of the Group;
 - (b) with the Vice-Chairperson(s), co-ordinate the agenda for the meetings of the Group with the Authority and the members of the Group;
 - (c) provide the agreed output of the Group to the Authority's Board of Supervisors; and
 - (d) make public statements on behalf of the Group on the basis of formally agreed positions.
- (4) To assist the Chairperson, the Group shall also elect one or two Vice-Chairperson(s), in a personal capacity, from among its members following the same procedure used to elect the Chairperson and, where possible, at the same meeting. Where there is a tie between two candidates, the Group may agree to appoint both candidates as Vice-Chairpersons. The Vice-Chairperson (or one of the Vice-Chairpersons) shall replace and represent the Chairperson in case of absence or impediment. If the Chairperson and the Vice-Chairperson (or both Vice-Chairpersons) are absent the meeting

shall be chaired by a member of the Group nominated by the Chairperson and Vice-Chairperson(s). The nomination shall be communicated to the Group seven days in advance of the meeting where possible.

- (5) The Chairperson or a Vice-Chairperson may be removed from office on a decision adopted by two-thirds of the members of the whole Group.
- (6) If the position of Chairperson or Vice-Chairperson is vacant, whether due to removal from office or otherwise, an election shall be held as soon as possible to appoint a new Chairperson or Vice-Chairperson under the procedure set out in this Article. Where two Vice-Chairpersons have been appointed, the position of Vice-Chairperson is not vacant if one Vice-Chairperson remains in position.

Article 3 – Convening and location of meetings

- (1) Meetings of the Group shall be convened by the Chairperson. The Group shall meet at least four times a year in accordance with Article 37(1) of the Regulation in the form and according to the timetable determined in agreement with the Authority. The Group shall meet with the Board of Supervisors regularly, at least twice a year, in accordance with Article 40(2) of the Regulation. Additional meetings of the Group may be convened depending on the calendar of ESMA's regulatory output and related consultation procedures.
- (2) The Group meetings shall in principle be held at the Authority's premises. However, whenever there is an objective need and upon request of the Group and agreement with the Authority, one meeting per year may exceptionally be held in another location that is convenient to all members of the Group. Each member can attend the meeting in conference call twice a year, and additionally with the agreement of the Chairperson.
- (3) In order for the Group to convene and make decisions, there shall be a quorum of two-thirds of its members. If the quorum is not met, decisions may be taken without quorum on a preliminary basis subject to subsequent approval by written procedure.

Article 4 – Agenda

- (1) The Chairperson of the Group shall draw up the agenda following a consultation with the members of the Group and the Authority. All suggestions shall be noted on the agenda, including those that are not scheduled for discussion.
- (2) The agenda shall be circulated to the Group by its secretariat three weeks in advance of each meeting. New items may only be added to the agenda in the light of new developments at the start of a meeting if there is consensus from members present.
- (3) A yearly work plan linked to the Authority's work plan shall be adopted each year by the Group and kept under regular review by the Group. Dates as well as some more strategic key topics for meetings of the next calendar year shall be agreed upon in the autumn.

Article 5 – Secretariat support and Group documents

- (1) The Authority shall ensure adequate secretariat support for the activities of the Group, its Chairperson and Vice-Chairperson(s).

- (2) The Authority shall send drafts on which the Group is consulted and all other working documents to the Group members at the earliest opportunity and no later than one week in advance of the date of the meeting.
- (3) In urgent or exceptional cases, the time limits for sending the documentation may be reduced to three working days of the Authority in advance of the date of the meeting.
- (4) The Authority shall organise meeting facilities, circulate meeting agendas, background materials and minutes, provide technical coordination for the preparation of opinions, advice or any other input the Group may wish to provide to the Authority and arrange the reimbursement of travel expenses.

Article 6 – Role of the Group

- (1) The role of the Group is to help facilitate the Authority’s consultation with stakeholders in areas relevant to the tasks of the Authority. In carrying out its role the Group:
 - (a) expects to receive from the Authority, and discuss with it, information on issues relevant to the Group’s role sufficiently early as to enable the Group to carry out its role most effectively;
 - (b) shall be consulted by the Authority on actions taken in accordance with Articles 10 to 15 of the Regulation concerning regulatory technical standards and implementing technical standards; and
 - (c) shall be consulted by the Authority on actions taken in accordance with Article 16 of the Regulation concerning guidelines and recommendations to the extent that these do not concern individual financial market participants.
- (2) The Group may also:
 - (a) submit opinions and advice to the Authority on any issue related to the tasks of the Authority with particular focus on the tasks set out in Articles 10 to 16 (regulatory technical standards, implementing technical standards, and guidelines and recommendations), 29 (common supervisory culture), 30 (peer reviews of competent authorities) and 32 (assessment of market developments) of the Regulation; and
 - (b) request the Authority to investigate an alleged breach or non-application of Union law within the scope of Article 17 of the Regulation.
- (3) Where the Group issues opinions or advice at the request of the Authority, the Group shall deliver its opinions or advice within the deadline requested by the Authority. The Authority shall ensure that the Group has sufficient time to agree and deliver its opinion or advice. Where the Group issues opinions or advice on its own initiative, it shall liaise with the Authority.

Article 7 – Decision-making

- (1) As far as possible, the Group shall take decisions by consensus.

- (2) In the event that a consensus has not been reached and decisions are put to a vote, agreement among two-third of the members present shall be required except in relation to elections for the Chairperson or Vice-Chairperson which shall follow the procedure set out in Article 2.
- (3) In exceptional circumstances where it has not been possible to reach consensus and three or more members present consider that their views are not adequately reflected in an opinion to be issued by the Group, those members are entitled to include a minority opinion in the Group's opinion. Such a minority opinion may state the names of the members whose views it reflects.

Article 8 – Written procedure

- (1) If necessary, the Group and any Working Group may adopt its decisions through use of written procedure. To this end, the Authority shall be responsible for the distribution to the Group members of drafts on which the Group is being consulted and/or any other working documents.
- (2) The written procedure is to be initiated by the Chairperson of the Group or by the rapporteur of any working group upon a request on the part of at least 50% of the members of the Group or working group or on his/her own initiative.
- (3) The written procedure shall specify the date by which Members shall provide their views or votes which shall not normally be less than ten days after the launch of the written procedure. Votes on decisions taken by written procedure shall be in written form and a failure to vote shall be considered a vote for the proposal.
- (4) However, if one-third of Group members ask for the question to be examined at a meeting of the Group, the written procedure shall be suspended and the question shall be added to the agenda of the next meeting of the Group or on the agenda of an extra-ordinary meeting to be organised according to the urgency of the issue.

Article 9 – Working language

The working language of the Group shall be English.

Article 10 – Working groups

- (1) In agreement with the Authority, the Group may establish working groups, from among its members, to examine specific issues related to the discharge of the Group's tasks.
- (2) Working groups shall be dissolved as soon as their tasks are fulfilled. Working groups shall appoint a rapporteur who will coordinate the activity of the working group and chair its meetings in a fair and inclusive manner.
- (3) The Group shall decide on the mandate, composition and duration of each working group. These working groups shall report to the Group. The composition of these groups should reflect, where possible, a balance of the Group's constituencies.
- (4) Working Groups shall aim to provide a report to the Group that can form the basis for a decision to be taken by the Group. Reports shall therefore reflect views discussed in the working group, including minority views, in a way that is designed to achieve consensus in the Group. Working

groups shall therefore work on the basis of consensus. In the event consensus is not reached, the working group shall adopt its report on the agreement of two-thirds of its members present.

- (5) Working group meetings shall be held at the Authority premises or such other location as is agreed by the members of the working group and the Authority or via conference call.
- (6) Working groups may in its work interact with ESMA Staff.

Article 11 – Attendance and duties of Group Members

- (1) The Chairperson and the Executive Director of the Authority is invited to attend the meetings of the Group and can ask the Vice-Chairperson and/or members of the Authority's Management Board and/or the Chairpersons of the relevant Standing Committees and working groups of the Authority and/or members of the Authority's staff to join specific meetings.
- (2) The European Commission may also be invited to attend the meetings of the Group.
- (3) At each meeting, the secretariat shall draw up an attendance list.
- (4) Members are expected to attend and actively participate in the meetings of the Group.
- (5) Members are expected to actively contribute to the work undertaken by the Group and to undertake any other duties decided on an *ad hoc* basis by the Group.
- (6) Failure to attend three meetings of the Group in a twelve month period shall be deemed a failure to perform the member's duties. In such a case, upon consultation with the Group Chairperson, the Authority may ask the Board of Supervisors to vacate the current position and to select a new Group member.

Article 12 –Conflicts of interest

- (1) At the start of each meeting, any member whose participation in the Group's or a working group's deliberations would raise a conflict of interest on a specific item on the agenda, other than the fact of their current positions with organisations, shall inform the Chairperson or rapporteur and disclose the conflict to the Group or working group in a transparent manner. That member may continue to discuss and vote on such items. In the event that the Chairperson's participation in a specific item on the agenda would raise a conflict of interest, the Chairperson shall inform the Group and the discussion of that item shall be managed by the Vice-Chairperson (or one of the Vice-Chairpersons).
- (2) Members' conflicts of interest will be duly noted in any report or opinion published by the Group or any of its working groups.

Article 13 – External Guests

- (1) Exceptionally, the Chairperson or a rapporteur may invite an external party to give testimony on a specific subject for consideration by the Group or working group as input. A suggestion to invite an external party can be made by any member and shall be approved by a simple majority of all members following consultation with the Authority. Once the external guest has been approved, the Chairperson or rapporteur shall inform the members no later than at the same time as the

agenda is circulated and ask the members if any other point of view should be heard at the same meeting.

- (2) The external guest will only be asked to participate in the part of the meeting directly related to her/his testimony and will be bound by the same rules on confidentiality regarding the session as set out in these Rules.

Article 14 – Summaries of conclusions

- (1) Summaries of the discussion and conclusions on each point on the agenda shall be drafted by the Authority and circulated to the Group following approval by the Chairperson.
- (2) Summaries of conclusions of previous meetings shall be adopted by the Group by written procedure or at meetings.

Article 15 – Information and confidentiality

- (1) The Authority shall provide to the Group all information that is necessary for it to carry out its role, subject to professional secrecy as set out in Article 70 of the ESMA Regulation and ESMA's Rules of Professional Secrecy and Confidentiality.
- (2) Members of the Group shall not share outside the Group any unpublished documents of the Authority which have been made available to them.
- (3) If Members of the Group fail to respect these obligations, the Authority may request the Member to stand down.

Article 16 – Regular Reporting and Transparency

- (1) The Authority shall include in its annual report a chapter providing an overview of the activities of the Group, including a summary of any opinions, reports and other advice it has formulated over the course of the given year.
- (2) The summary for inclusion in the annual report shall be approved by the Chairperson and Vice-Chairperson(s) of the Group.
- (3) The Group may produce an Activity Report that shall contain an executive summary of the opinions and reports delivered by the Group listing main achievements and inputs to the Authority, which shall be prepared by the Group and reviewed by the Chair and Vice-Chair(s).
- (4) The Authority shall make public on its website:
 - (a) the names of members of the Group and any changes or amendments to the Group's membership;
 - (b) the opinions and advice of the Stakeholder Group and the results of their consultations; and
 - (c) the summaries of conclusions of its meetings



- (d) Short biographies (CV's) of the Members of the Group.

Article 17 – Correspondence

- (1) Correspondence sent to the Group by third parties shall be addressed to the Authority, for the attention of the Stakeholder Group Chairperson.
- (2) Correspondence sent to Group members by the Authority or group Members shall be sent to the e-mail address which they provide for that purpose.

Article 18 – Access to documents

- (1) Public access to the Group's documents shall be the same as that applying to the Authority's documents.
- (2) The Authority shall be competent to take decisions regarding requests for access to Group documents.

Article 19 – Protection of personal data

All processing of personal data for the purposes of these rules of procedure shall be in accordance with Regulation (EC) No 45/2001.

Article 20 – Collaboration with other groups

The Group should work as an interface with other groups in the financial services area established by the Commission or by Union legislation or as otherwise agreed with the Authority.

Article 21 – Amendments to these Rules of Procedure

The Group may amend these Rules of Procedure by a majority of two-thirds of the Group's members, in particular in order to take into account possible developments in the roles, tasks and organisation of the Authority and the Group.

Done at Paris on 29 January 2014

SMSG Chair
For the Securities and Markets Stakeholder Group