

TERMS OF REFERENCE

Corporate Finance Standing Committee Transparency Operational Working Group

1. Having regard to the ESMA Regulation, particularly in relation to ESMA's task of promoting supervisory convergence, the Corporate Finance Standing Committee (CFSC) decided in September 2014 to set up an Operational Working Group (OWG) on Transparency related issues, with a view to contributing towards building a common supervisory culture and consistent supervisory practices.
2. This objective corresponds with the relevant part of ESMA's scope of action (as set out in Article 1 of the ESMA Regulation): "The Authority shall contribute to: (a) improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision ..., (d) preventing regulatory arbitrage ..., and (f) enhancing customer protection".
3. The terms of reference for this CFSC Transparency OWG are set out below, and are to be read together with the ESMA Regulation (in terms of ESMA's task of fostering supervisory convergence) and the 'Procedures for ESMA groups' (ESMA/2012/236rev2).
4. All Transparency Directive issues related to accounting, audit, periodic reporting and storage of regulated information are excluded from the remit of this group as they fall within the competences of the Corporate Reporting Standing Committee.

Objectives

5. The main objective of the CFSC Transparency OWG is to promote common supervisory approaches and practices across Member States by enhancing mutual understanding, thereby improving convergence across the EU.
6. The main areas of focus will be issues related to the Transparency Directive¹ and its implementing measures² and related advice (including FAQ³).
7. Members of the CFSC Transparency OWG will organise ad hoc sessions of supervisors to discuss operational issues and supervisory practices, and exchange views on issues of particular importance or difficulty.

¹ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

² Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

³ Questions and Answers Transparency Directive – October 2015



8. This could include, but is not limited to, sharing views on issues arising from the practical and operational implementation of the Transparency Directive, such as:
 - the regime applicable to the notification of major shareholdings in the case of a group, including the mechanism provided for in Article 12(3);
 - the content of the notification of major holdings of financial instruments provided for in Article 12(1) as well as the assessment of the existence of problems related to the utilisation of the standard form when notifying shares and financial instruments, its utility and the potential need to develop an implementing technical standard under Articles 12(9) and 13(3);
 - which events trigger the notification of major shareholdings;
 - the revision of the existing Q&A on Transparency;
 - issues raised by national competent authorities on scope and interpretation of concepts of the Transparency Directive;
 - any other issues arising from the implementation of the Transparency Directive with a view to ensure supervisory convergence.
9. Without prejudice to the competences of CFSC, the CFSC OWG on Transparency related issues shall also:
 - Monitor and develop the content of the indicative list of financial instruments subject to notification requirements under Article 13(1);
 - Monitor financial instruments which Member States consider are not subject to notification requirements and if needed develop a list of such (white list).
10. In order to perform its tasks the CFSC OWG on Transparency related issues can:
 - propose to the CFSC the development of ESMA guidelines or recommendations dealing with operational and supervisory matters on specific areas;
 - make suggestions to the CFSC on topics deserving further work when common positions and best practices are not sufficient to ensure supervisory convergence and, in particular, to identify areas of divergence in practices or interpretations on the basis of operational cases, where further harmonisation might be necessary;
 - propose to the CFSC the recommendation to the Review Panel of possible topics for a peer review in response to broad and pervasive differences in supervisory practices and/or
 - discuss, on the basis of identified operational needs, further tools to enhance a common supervisory culture in the area of the Transparency regime and make recommendations to CFSC with a view to achieving those.
11. There will be a synergy of task givers to the CFSC Transparency OWG. The Chair will ensure an adequate balance of dealing with top-down as well as bottom-up issues.



12. The CFSC Transparency OWG shall promote supervisory convergence on operational and supervisory matters on transparency related issues.

Structure and governance

13. The CFSC Transparency OWG is established as a permanent working group under the auspices of the Corporate Finance Standing Committee. It is accountable to, and will report the results of its activities to, CFSC.
14. The CFSC Transparency OWG will be composed of representatives of Board members from competent authorities having the necessary authority and day-to-day responsibilities in the field of operational and supervisory issues.
15. Representatives from the European Commission will be invited to take part in the CFSC Transparency OWG meetings, except for issues that are covered by confidentiality.
16. The CFSC will set the timing for specific mandates.

Review

17. The Terms of Reference of the CFSC Transparency OWG will be reviewed every two years by the Board of Supervisors in order to assess if this structure is appropriate for ensuring operational supervisory convergence in this area.