

## TERMS OF REFERENCE

### Secondary Markets Standing Committee

1. ESMA achieves its mission to enhance investor protection and promoting 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. According to Regulation 1095/2010 of the European Parliament and Council (ESMA Regulation), ESMA shall act within the powers conferred by its establishing Regulation and among others within the scope of Directive 2004/39/EU on markets in financial instruments (MiFID), Commission Regulation 2006/1287/EC as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admissions of financial instruments to trading, and defined terms for the purposes of MiFID (MiFID Implementing Regulation), Directive 2014/65/EU on markets in financial instruments (MiFID II) and Regulation 2014/600/EU on markets in financial instruments (MiFIR).
3. In order to fulfil its mission the Board of Supervisors has established the Secondary Markets Standing Committee. The 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 Secondary Markets Standing Committee 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:
  - *Contribute to assessing risks to Investors, Markets and Financial Stability:* the Secondary Markets Standing Committee 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 Secondary Markets Standing Committee monitors the efficient implementation of the MiFID II and MiFIR provisions when they relate to trading rules, infrastructures and microstructure of secondary markets.

- *Promoting Supervisory Convergence:*

- Preparing guidelines, Q&As, opinions and any other tool available in the ESMA Regulation applicable to its area of competence and in particular on the MiFID I, MiFID II and MiFIR provisions.
- Developing ESMA's opinions with respect to pre-trade transparency waivers for equity, equity-like and non-equity financial instruments.

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

- Following its monitoring activity of the efficient implementation of the MiFID I, 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 elaborate 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 elaborate 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 other trading activity of the 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 MiFID's annual market transparency calculations, by regularly revising ESMA's Protocol on the Operation of the ESMA MiFID Database.
- Supporting the publication of the information required by Article 5 of MiFIR with respect to the volume cap mechanism by clarifying any elements necessary with respect to the methodology to calculate the total volume of trading per financial instrument and the percentages of trading that use those waivers across the Union and per trading venue.

5. In line with ESMA's product intervention powers under Article 39, 42 and 43 MiFIR, the Standing Committee 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 and, where appropriate, assess them in accordance with the agreed methodology and procedures or refer them to another committee for such assessment.

6. The Secondary Markets Standing Committee shall liaise and coordinate with other relevant groups reporting to the Board of Supervisors where its activities relate or are complementary to those of other groups.

### **Structure and governance**

7. The responsibilities of the Chair, rapporteur and members of the Secondary Markets Standing Committee are as set out in the Procedures for ESMA groups.
8. Permanent or temporary groups reporting to the Standing Committee may be set-up when required in line with the Procedures for ESMA groups.
9. The Secondary Markets Standing Committee has established a Consultative Working Group. Alternatively, it may rely on assistance of consultative working groups established by other Standing Committees where this is appropriate and suitable.
10. The Secondary Markets Standing Committee will establish two temporary working groups each with their own terms of reference:
  - the Market Structures Task Force
  - the Transparency Task Force
11. The Secondary Markets Standing Committee will establish permanent sub-structures for the review of pre-trade transparency waivers.
12. The Secondary Markets Standing Committee 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 Standing Committee to fulfil its tasks.

### **Review**

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