

## TERMS OF REFERENCE

### Post-Trading Standing Committee (PTSC)

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. 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 Regulation (EU) No 648/2012 (EMIR), Regulation (EU) No 909/2014 (CSDR), Directive 98/26/EC on settlement finality (SFD), Directive 2002/47/EC on financial collateral arrangements, Directive 2014/65/EU, Regulation (EU) No 600/2014 (MIFID2 and MIFIR) and Regulation (EU) No 2015/2365 (SFTR) where related to post-trading aspects, and any further legally binding Union act which confers tasks to ESMA on post-trading matters and any other Union act for which ESMA need to be consulted for matters affecting post-trading market infrastructures or post-trading processes or operations.
3. In order to fulfil its mission the Board of Supervisors has established the Post-Trading Standing Committee (PTSC). The Terms of Reference cover the responsibilities and tasks of this group and the Procedures for ESMA groups (ESMA/2011/BS/236rev3) 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 PTSC contributes to ESMA's mission by addressing issues related to:
  - *Assessing the Risks to Investors, Markets and Financial Stability, including:*
    - o Definition and consistent application of organisational, conduct of business and prudential requirements applicable to financial markets infrastructures (CCPs, CSDs and trade repositories);
    - o Annual EU-wide CCP stress testing exercise;
    - o Monitoring and improving settlement efficiency;
    - o Monitoring the derivative activity of non-financial counterparties and their systemic relevance as a group.

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<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, including:*
  - Development of Q&As, guidelines and opinions under EMIR, CSDR, SFTR, MiFIR or under any other EU legislation related to post trading matters;
  - Annual peer review analysis of the supervisory activities of CCPs by national competent authorities;
  - Peer reviews (at least every three years) of the supervision of CSDs which make use of the freedom to provide services in another Member State or to participate in an interoperable link between CSDs;
  - Development of procedures on settlement discipline (reporting on settlement fails, standardised procedures and messaging protocols, supervisory practices on enforcement);
  - Potential development of guidelines on CCP recovery and resolution matters;
  - Co-ordinating NCAs' supervisory approach to the clearing obligation and risk mitigation techniques for various types of entities;
  - Development of a report on the penalties and supervisory measures imposed by competent authorities under EMIR;
  - Coordinating the exchange of information between authorities under the SFD, and the actions that may need to be taken where notifications are received regarding the opening of insolvency proceedings under the SFD, which have cross-border implications.
- *Completing a Single Rulebook for EU financial markets through the:*
  - Revision where necessary of technical standards under EMIR, CSDR, SFTR or MiFIR (for post-trading aspects) and development of new technical standards under the amendments to EMIR (Securitisation Regulation and potentially the upcoming EMIR Review amendments) as well as potentially under the forthcoming CCP Recovery and Resolution Regulation. In particular:
    - Finalisation of technical standards on the clearing obligation and on risk mitigation technique for OTC derivatives associated to covered bonds or securitisations under EMIR;
    - Potential development of technical standards on CCP recovery and resolution matters and on EMIR Review amendments to EMIR (Refit or EMIR 2.2);
    - Potential development of new technical standards mandating the clearing of certain other classes of OTC derivatives that meet the criteria of the clearing obligation procedure under EMIR;
  - Reports assessing the implementation, the revision or potential extensions of EMIR, CSDR or SFTR, or similar reports related to other EU legislation for matters affecting post-trading market infrastructures or post-trading processes or operations (such as MiFIR Reports related to post-trading market infrastructures).

5. Given ESMA's role as the coordinator of NCAs supervising CSDs joining T2S, restrictive sessions of the PTSC are held solely with the authorities supervising CSDs joining T2S. The purpose of these restrictive sessions is to coordinate those NCA's position and to convey it to the ECB or within the T2S cooperative arrangement between supervisors and overseers.
6. In line with ESMA's product monitoring obligation under Articles 39 MiFIR and its product intervention powers under Article 40 and 43 MiFIR, the PTSC shall refer any potential threats that are relevant to ESMA's objectives of ensuring investor protection, orderly functioning and integrity of financial/commodity markets and to stability, to the relevant Standing Committee.
7. The PTSC 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**

8. The responsibilities of the Chair, rapporteur and members of the PTSC are as set out in the Procedures for ESMA groups.
9. Permanent or temporary groups reporting to the PTSC may be set-up when required in line with the Procedures for ESMA groups.
10. The PTSC has establish a Consultative Working Group. The Standing Committee can – where appropriate – and in liaison with the rapporteur of the relevant Standing Committee consult other Consultative Working Groups.
11. The PTSC 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 PTSC to fulfil its tasks.

### **Review**

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