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\(^1\) 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), Regulation (EU) 2017/2402 (Securitisation Regulation) 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.

4. It should be noted that the Board of Supervisors has established other Standing Committees to deal with responsibilities and tasks related to CCPs, Trade Repositories and trade reporting, so these responsibilities and tasks are not in the scope of activity of the PTSC. However, where needed, the rapporteur can help coordinate with these Standing Committees or other Standing Committees where a post-trading topic could have some relevance for these other Standing Committees as well.

5. In line with the ESMA 2020-2022 Strategic Orientation (ESMA22-106-1942), the PTSC will consider in all its activities how to (i) contribute to a larger retail investor base to develop the Capital Markets Union, (ii) promote sustainable finance and long-term oriented capital markets, (iii) develop digital finance as an opportunity for market participants and regulators, (i) achieve a proportionate approach.

Responsibilities

6. 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 CSDs as financial markets infrastructures;
  
  o Monitoring and improving settlement efficiency;
  
  o Monitoring and assessing the risks related to internalised settlement;
  
  o Drafting the reports that ESMA has to submit to the European Commission under Article 74 of CSDR, in cooperation with EBA and the competent authorities and the relevant authorities, providing assessments of trends, potential risks and vulnerabilities, and, where necessary, recommendations of preventative or remedial action in the markets for services covered by CSDR;
  
  o Monitoring the derivative activity of financial and non-financial counterparties and their respective systemic relevance as a group.

- **Promoting Supervisory Convergence, including:**
  
  o Contributing to the consistent application of the post-trading regulatory regimes and related requirements, in particular by sharing experiences gathered in the course of supervisory or enforcement activity, discussing specific enforcement and supervisory cases, as well as
  
  o Developing relevant material to promote supervisory convergence in those areas, in particular Q&As, supervisory briefings, guidelines and opinions under EMIR, CSDR, MiFIR or under any other EU legislation related to post trading matters;
  
  o Facilitating co-ordinated action and promoting the building of a common culture on supervision and enforcement of post-trading requirements, through the enhancement of supervisory convergence and an exchange on supervisory practices, notably in the field of authorisation and supervision of CSDs, internalised settlement reporting or the implementation and supervision of counterparties’ compliance with the OTC derivative requirements under EMIR;
  
  o Promoting and facilitating operational cooperation and exchange of information for the supervision of compliance with the post trading regulatory regimes and requirements;
  
  o Monitoring and coordinating the approach regarding the supervision of cross-border provision of services by CSDs;
  
  o 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, and collaborate with the Management Board in case of another peer review related to post trading being conducted;
- Completing a Single Rulebook for EU financial markets through the:

  - Revision where necessary of technical standards under EMIR, CSDR or MiFIR (for post-trading aspects) and development of new technical standards or technical advice under the amendments to EMIR (EMIR Refit Regulation (EU) 2019/834). In particular:
    - Development of reports on the review of the clearing thresholds, and when necessary, development of amending technical standards on the clearing thresholds;
    - Review of the Delegated Regulations on the clearing obligation and on bilateral margining (taking into account that bilateral margin is a joint ESA mandate);
    - Review of the Delegated Regulation on bilateral margining (taking into account bilateral margin is a joint ESA mandate) with respect to the potential evolution of the BCBS and IOSCO framework and its level of implementation across the relevant jurisdictions;
    - Development of technical advice on the conditions under which the commercial terms for providing clearing services are considered to be fair, reasonable, non-discriminatory and transparent.
    - Cooperation with the EBA in the development by the EBA of technical standards on risk model validation procedures under EMIR Refit;
    - 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 MiFIR, or similar reports related to other EU legislation for matters affecting post-trading issues. In particular:
    - Reports for the review of CSDR;
    - Reports on the clearing solutions for pension scheme arrangements;
- Report on whether certain trades generated by certain post trade risk reduction services should be exempted from the clearing obligation

7. Given ESMA’s role as the coordinator of NCAs supervising CSDs participating in T2S, restrictive sessions of the PTSC are held solely with the authorities supervising CSDs participating in 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.

8. 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.

Product intervention powers

9. In line with ESMA’s product monitoring obligation under Articles 39 MiFIR and its product intervention powers under Articles 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.

Structure and governance

10. The responsibilities of the Chair, rapporteur and members of the PTSC are as set out in the Procedures for ESMA groups.

11. Permanent or temporary groups reporting to the PTSC may be set-up when required in line with the Procedures for ESMA groups.

12. The PTSC has established 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.

13. 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

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