

## PRESS RELEASE

### ESMA advises on framework for data reporting service providers

The European Securities and Markets Authority, the EU's securities markets regulator, publishes today advice to the European Commission related to data reporting service providers (DRSP).

The advice focuses on the fees, fines and penalties applicable to DRSPs subject to EU supervision as well as the criteria determining whether certain DRSPs may be exempted from ESMA supervision (derogation criteria). It aims to provide a simple and clear framework by leveraging on the existing frameworks for Trade Repositories and Securitisation Repositories and by streamlining the approach for the assessment of the derogation criteria. Following the ESAs' Review, authorisation and supervision of authorised reporting mechanisms (ARMs) and approved publication arrangements (APAs) will transfer from competent authorities to ESMA.

Steven Maijor, Chair, said:

“The delivery of this advice is a major step in the preparation for the new supervisory responsibilities of ESMA.

“ESMA has taken into the feedback from the consultation into account and has refined the derogation criteria to assure a balanced allocation of supervisory responsibilities regarding DRSPs between NCAs and ESMA.

“It is of utmost importance for DRSPs to have certainty on the applicable regulatory framework prior to the transfer of supervisory responsibilities to ESMA. I would, therefore, welcome the swift adoption by the European Commission of the relevant delegated acts on the basis of this advice.”

### ESMA recommends a two-step assessment of the derogation criteria

ESMA agrees with the view expressed by stakeholders that two of the four derogation criteria appear to be more significant for assessing whether the activity of an APA or ARM is of



relevance for the internal market. Notably, these are the criteria based on the number of investment firms in another Member State to which the DRSP provides services as well as the one on the number and volume of transactions reported or published.

Accordingly, ESMA proposes a framework for determining DRSPs eligibility for exemption from ESMA supervision where the assessment of more significant criteria is cumulative while the assessment of the remaining two criteria is non-cumulative. In addition, ESMA carefully and proportionally calibrated the quantitative thresholds which should be applied in the assessment of these criteria.

### **ESMA recommends leveraging on the existing fees, fines and penalties frameworks**

ESMA proposes both application and authorisation fees, as well as an annual supervisory fee for DRSPs. For that, ESMA draws on the existing fee frameworks for Trade Repositories and Securitisation Repositories. ESMA also adopts an approach for the calculation of fees for 2022, the first year of its supervision of DRSPs. It has also proposed a simplified timeline for payment of the fees.

In its technical advice on fines and penalties for DRSPs, ESMA is making proposals on specific procedural aspects including (i) the right to be heard by the Independent Investigating Officer (IIO); (ii) content of the file to be submitted by the IIO; (iii) access to the file; (iv) procedure for imposing penalties; (v) adoption of interim decisions; (vi) limitation periods for the imposition as well as enforcement of penalties, including their collection; and (vii) the relevant calculation periods.

The final advice builds on the existing enforcement framework regarding Trade Repositories and Credit Rating Agencies as well as on the experience gained in its implementation in the last years. It also takes into account the Authority's previous technical advice on procedural rules for imposing fines and penalties to TC-CCPs delivered on 31 March 2020.

### **Next steps**

After submitting its technical advice to the Commission, ESMA will continue working with the NCAs on a smooth transfer of supervisory responsibilities for the relevant DRSPs as of 1 January 2022.



## Notes for editors

1. ESMA is the European Union's securities markets regulator. Its mission is to enhance investor protection and promote stable and orderly financial markets.

It achieves these objectives 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. directly supervising specific financial entities.
2. ESMA achieves its mission within the European System of Financial Supervision (ESFS) through active cooperation with the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Systemic Risk Board, and with national authorities with competencies in securities markets (NCAs).

Further information:

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