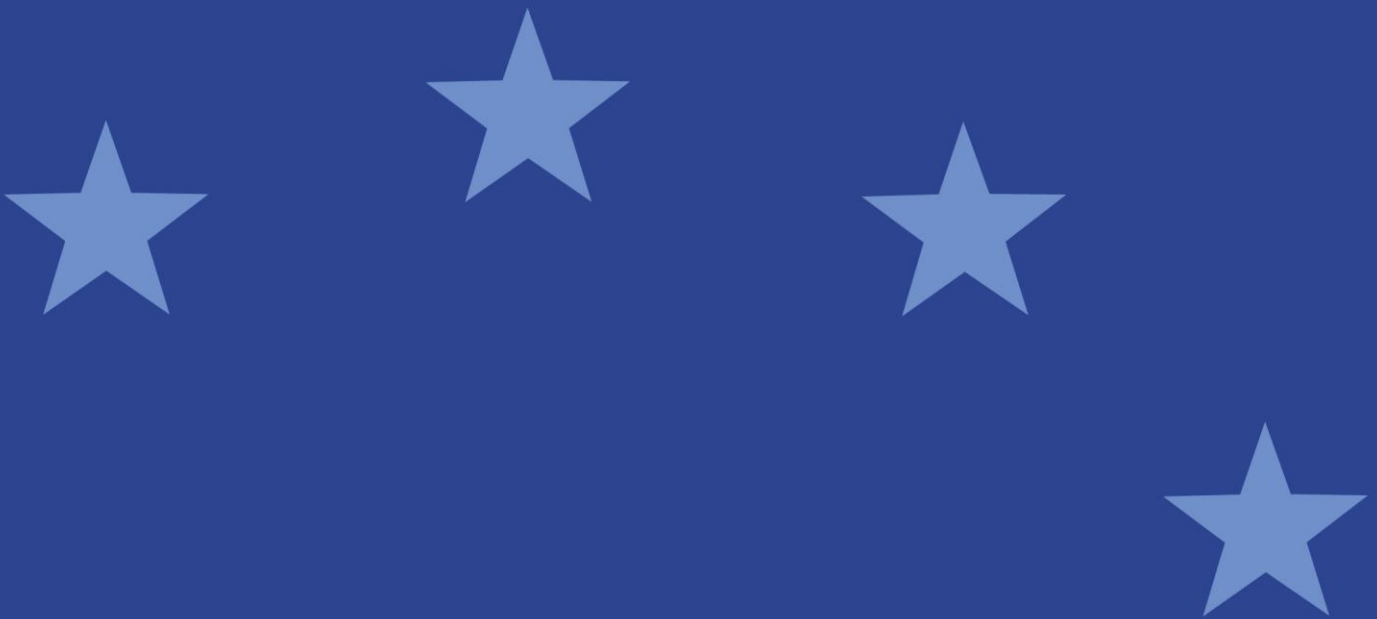




European Securities and  
Markets Authority

# Procedure

ESMA Stakeholder Group Renewal Procedure 2018



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## 1. Introduction

1. This document lays down the procedure for selection of the members of the ESMA Securities and Markets Stakeholder Group (hereinafter referred to as the Group).
2. The objective of the document is to ensure that ESMA applies a legally sound and practicable process which is supporting ESMA to establish a well-functioning Stakeholder Group.
3. The current procedure defines the existing selection procedure for the purpose of establishing the Group. It builds on the experiences from the past selection procedures of the Group and has also benefited from discussions with other ESAs and the European Ombudsman.

## 2. Legal background

4. The composition of the Group is defined in article 37 of the ESMA Regulation (1095/2010)(the Regulation). The criteria for selection are specified in this procedure.

*Article 37 states:*

37.2. The Securities and Markets Stakeholder Group shall be composed of 30 members, representing in balanced proportions financial market participants operating in the Union, their employees' representatives as well as consumers, users of financial services and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial market participants.

37.3. The members of the Securities and Markets Stakeholder Group shall be appointed by the Board of Supervisors, following proposals from the relevant stakeholders. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across the Union.

*The preamble to the Regulation states in recital 48:*

The Authority should consult interested parties on regulatory or implementing technical standards, guidelines and recommendations and provide them with a reasonable opportunity to comment on proposed measures. Before adopting draft regulatory or implementing technical standards, guidelines and recommendations, the Authority should carry out an impact study. For reasons of efficiency, a Securities and Markets Stakeholder Group should be used for that purpose, and should represent, in balanced proportions, financial market participants, small and medium-sized enterprises (SMEs), academics and consumers and other retail users of financial services. The Securities and Markets Stakeholder Group should work as an interface with other user groups in the financial services area established by the Commission or by Union legislation.

Furthermore article 37 states:

- In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across

the Union. (Article 37.3 in the second sentence)

- Members of the Securities and Markets Stakeholder Group shall serve for a period of two-and-a-half years, following which a new selection procedure shall take place. (Article 37.4 subparagraph 1 in the fourth sentence). According to ESMA's policy, members who have been appointed after the Group's renewal in July 2016, will continue to take part in the ESMA stakeholder group until they have served two-and-a-half years.
  - Accordingly, ESMA envisages appointing 24 members for new mandates, with six members expected to continue their mandates.
  - The members of the Securities and Markets Stakeholder Group may serve two successive terms. Article 37.4 subparagraph 2)
5. Applicants are reminded that unless a ratified withdrawal agreement establishes another date, or unless the European Council decides to extend the two year period provided for in Article 50 TFEU, all Union primary and secondary law will cease to apply to the UK from 30 March 2019, 00:00h (CET). The United Kingdom will then become a third country. Subject to a withdrawal agreement with the UK, the new status of the United Kingdom must from that moment be taken into account also for the purposes of Article 37§2 and §3 of the ESMA Regulation. According to those provisions, the Securities and Markets Stakeholder Group is composed of members representing in balanced proportions financial market participants operating in the Union, their employees' representatives as well as consumers, users of financial services and representatives of SMEs. At least five of its members shall be independent top-ranking academics.

## 2.1 Definitions of the Criteria following from the Regulation

6. The Authority seeks to have represented in the Group stakeholders representing retail users of financial services, consumers and their representatives, financial services' intermediaries; market infrastructure providers; issuers; institutional investors; representatives of shareholders; financial services employees and their representatives; individuals representing the interests of small and medium-sized enterprises (SMEs); and top-ranking academics.
7. The following categories are outlined in the Regulation:
- Users of financial services – includes individuals and/or individuals or associations delivering services and advice to retail users
  - Representatives of consumers and individual consumers – includes representatives of consumer organisations or any natural person acting in a consumer capacity with proven record in protection of consumers' interests
  - Financial market participants – this group includes i.a.:
    - Financial services' intermediaries
    - Market Infrastructure providers such as: i) Regulated Markets ii) MTFs iii)

- Issuers incl corporate treasurers (potentially some of which may *alternatively* represent SME's)
  - Institutional Investors such as i) Asset and Fund Management Firms, ii) alternative investment fund managers, iii) Insurance Companies, iv) Pension Funds,
  - Representatives of shareholders
  - Auditors
  - Accountants
  - Credit Rating Agencies.
- Representatives of financial services employees i.e. i) employees' representatives from a firm/company or ii) trade unions.
  - Representatives of small and medium-sized enterprises (SMEs) – this group includes individuals employed by a SME relevant to the securities and financial markets field, or representatives of their organisations.
  - Independent Top-ranking academics

Individuals falling into this category are assessed based on their academic qualifications. They should preferably hold a Ph.D. in finance, economics, law or other fields relevant to financial services, or equivalent qualifications and a solid academic experience in a university or institute of higher education (e.g. professorship), have a strong publication record in the field of finance, economics, law and participation in international conferences and workshops. They must be independent from interests of credit and investment institutions or similar.

8. The final number of proposed candidates per category of stakeholders should be decided on the basis of the applications reflecting the most suitable candidates, bearing in mind the Regulation's requirement for gender and geographical balance. The generally applied criteria and the specific criteria per category of stakeholders, as presented below, should also be considered.
9. Current members of the Group may be reappointed for a second successive term, as set out in Article 37.4.

## 2.2 General considerations

10. The Group is composed of categories listed under Article 37, representing relevant stakeholders in the field of activities of ESMA. To guarantee exclusive representations, each member of the Group must only represent one category and not be in a situation of conflict of interest with another category represented in the Group.
11. Article 37.3 of the ESMA Regulation states in the second sentence: "In making its decision,

the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across the Union.”

12. ESMA will need to consider the final composition of the Group in relation to the candidatures received and the degree of balanced and proportionate representation achievable, considering professional expertise covering the broad range of areas of activity of the Authority, according to Article 37.2 of the Regulation, gender, geographical regions and field of representation alike. Applicants need to meet the conditions of belonging to one of the categories above to become eligible. Group members serve in their personal capacity according to the Rules of Procedures of the Group. As foreseen in the Regulation, Group members may reapply for a second term.
13. ESMA shall take into account relevant experience of a candidate at the European/international level, as ESMA expects the potential member to convey positions that are representative at European level in order to contribute to the further improvement of the EU single market.

#### **2.2.1 Considerations as to the requirements set in the Call for Expression of Interest**

14. *Eligibility criteria:* The following four mandatory criteria are stated in the Call for Expression of Interest.
  - a. Experience: minimum 4 years of relevant professional experience in the financial services sector for all Group membership categories. The professional experience and expertise (“professional quality”) of a candidate will be assessed against the category selected by the candidate in the application form. However, ESMA notes that experience beyond the minimum criteria will be highly valued and, in most cases, necessary;
  - b. Availability to participate in meetings at least 4 times a year and commitment to deliver active contributions and to carry out significant work between meetings to prepare the output of the Group (opinions, feedback statements, position papers, reports etc.).
  - c. English command: have sufficient English written and oral communication skills to enable the candidate to actively participate in the Group;
15. In addition to the Regulation requirements and the mandatory eligibility criteria the following *exclusion criteria* will be considered:
  - a. Candidate is in a situation of conflict of interest.
  - b. Candidate has been found guilty of fraud or misconduct.
16. Potential applicants are reminded to carefully consider their capacity to take part in more than one Stakeholder Group (IRSG, OPSG of EIOPA, BSG of EBA) or similar bodies associated with the European Commission (such as the Financial Services User Group, FSUG).

### **3. Governance and Process**

17. ESMA shall launch a Call for Expression of Interest, establishing the legal basis, the objectives and the criteria for the selection of candidates, in addition to outlining the documentation to be provided in the application, including a declaration on conflict of interest to be signed by the candidates of relevant categories.

The Call for Expression of Interest is accompanied by a personal data protection notice in order for ESMA to comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000.

#### **3.1 Selection**

18. Following the closing of the Call for Expression of Interest, the ESMA staff shall produce a list of all the applications received. The ESMA staff shall perform a check whether applications are complete and correctly submitted. Incorrect applications may in the interest of ESMA be included in the list of proposed stakeholders, in case deficiencies are rectified.
19. Involved ESMA staff are required to raise any potential conflicts of interest in relation to any of the received applications.
20. ESMA staff shall establish a shortlist of preferred candidates regarding each category, and present it to the ESMA Management Board for its decision.
21. The ESMA Management Board shall have the possibility to choose any candidate for any category, also if not included in the proposed shortlist submitted to it, provided that minimum eligibility criteria are met.

#### **3.2 The Board of Supervisors**

22. The Management Board, supported by ESMA staff, will present to the Board of Supervisors a first and a second priority list of proposed candidates, accompanied by a reasoned report, for its decision on the selected candidates and the composition of the Group.
23. The Management Board and the Board of Supervisors shall have access to a summary of the full pool of eligible candidates, and, if requested, will be given the possibility to look into all applications, in a closed room and after signing a confidentiality agreement, due to data protection requirements.
24. The Board of Supervisors will decide on the composition of the Group after having taken into account the proposal of the Management Board. The Board of Supervisors will also, using the second priority list, establish a list of reserve candidates who will be able to stay on the reserve list for a maximum of two and a half years.
25. The appointed and rejected candidate(s) shall be informed and the appointed ones asked

to confirm that they accept the post as members of the Group or as potential alternates of the Group. The composition of the Group of ordinary members shall be made public, while the reserve list shall be kept non-public.

#### **4. Vacancies**

26. In case of necessary replacement, e.g. due to resignation, the leaving Group member shall be replaced by one of the candidates from the reserve list.
27. The reserve list established according to the process outlined above shall to the extent possible contain two persons per category of stakeholder without internal ranking. In case of need for replacement, the Management Board shall make a proposal for a replacement making a selection between them taking into account the composition of the Group in full. The decision on the replacement person will be taken by the Board of Supervisors.
28. In case the personal and/or professional circumstances of a member change in such a way that the member does no longer fulfil the eligibility criteria in order to represent the relevant category for which he/she was selected or severe conflicts of interest arise, a member is obliged to step down. ESMA will in such case appoint an appropriate person from the reserve list.



## Annex I

### Article 37 of the Regulation

#### Securities and Markets Stakeholder Group

1. To help facilitate consultation with stakeholders in areas relevant to the tasks of the Authority, a Securities and Markets Stakeholder Group shall be established. The Securities and Markets Stakeholder Group shall be consulted on actions taken in accordance with Articles 10 to 15 concerning regulatory technical standards and implementing technical standards and, to the extent that these do not concern individual financial market participants, Article 16 concerning guidelines and recommendations. If actions must be taken urgently and consultation becomes impossible, the Securities and Markets Stakeholder Group shall be informed as soon as possible.

The Securities and Markets Stakeholder Group shall meet at least four times a year.

2. The Securities and Markets Stakeholder Group shall be composed of 30 members, representing in balanced proportions financial market participants operating in the Union, their employees' representatives as well as consumers, users of financial services and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial market participants.
3. The members of the Securities and Markets Stakeholder Group shall be appointed by the Board of Supervisors, following proposals from the relevant stakeholders. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across the Union.
4. The Authority shall provide all necessary information, subject to professional secrecy, as set out in Article 70, and ensure adequate secretarial support for the Securities and Markets Stakeholder Group. Adequate compensation shall be provided to members of the Securities and Markets Stakeholder Group that are representing non-profit organisations, excluding industry representatives. The Securities and Markets Stakeholder Group may establish working groups on technical issues. Members of the Securities and Markets Stakeholder Group shall serve for a period of two-and-a-half years, following which a new selection procedure shall take place.

The members of the Securities and Markets Stakeholder Group may serve two successive terms.

5. The Securities and Markets Stakeholder Group may submit opinions and advice to the Authority on any issue related to the tasks of the Authority with particular focus on the tasks set out in Articles 10 to 16 and Articles 29, 30 and 32.
6. The Securities and Markets Stakeholder Group shall adopt its rules of procedure by a majority of two-thirds of its members.
7. The Authority shall make public the opinions and advice of the Securities and Markets Stakeholder Group and the results of its consultations.